

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America CR-15-976-TUC-CKJ(BGM)

vs.

Ramon Ramos-Zepeda, February 19, 2016
2:03 p.m.
Defendant. Tucson, Arizona

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

EVIDENTIARY HEARING

BEFORE THE HONORABLE BRUCE G. MACDONALD
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S

For the Government:

Kathryn Furtado
Liza Granoff
United State's Attorney's Office
405 West Congress
Tucson, Arizona 85701

For the Defendant:

Juan L. Rocha
Law Office of Juan L. Rocha
PO Box 5965
Mesa, Arizona 85211

PROCEEDINGS WERE DIGITALLY RECORDED

TRANSCRIBED BY: ERICA R. McQUILLEN, RDR, CRR
405 West Congress, Suite 1500
Tucson, Arizona 85701
(520) 205-4267

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1 P R O C E E D I N G S

2 THE CLERK: CR-15-976, United States of
3 America v. Ramon Ramos-Zepeda, scheduled before
4 this Court for a motion hearing.

5 Counsel, please state your appearances for
6 the record.

7 MS. FURTADO: Good afternoon, Your Honor.
8 Kathryn Furtado and Liza Granoff for the United
9 States.

10 THE COURT: Thank you. Good afternoon,
11 Ms. Furtado, and good afternoon, Ms. Granoff.

12 MS. GRANOFF: Good afternoon, Judge.

13 MR. ROCHA: Good afternoon, Your Honor.
14 Juan Rocha on behalf of Mr. Ramos-Zepeda, who is
15 present and in custody and being assisted by the
16 Spanish court interpreter.

17 THE COURT: Thank you. Good afternoon,
18 Mr. Rocha, and good afternoon, Mr. Ramos-Zepeda.

19 Mr. Ramos-Zepeda, my name is Bruce
20 Macdonald. I'm a magistrate judge, and I'm going
21 to be conducting the proceedings this afternoon.

22 We are here on three matters. We are here
23 on Mr. Rocha's motion to suppress statements.
24 We're also here on Mr. Rocha's amended motion to
25 dismiss the indictment for unlawful exclusion under

1 Title Eight U.S.C. 1326(d), we're also here on the
2 Government's motion requesting production of
3 reciprocal discovery.

4 I'm hoping to deal with the last one
5 first, which is probably the easier of the three.
6 So Ms. Furtado, with regard to the Government's
7 motion, it's my understanding that you're just
8 asking for reciprocal discovery.

9 MS. FURTADO: I am, Judge. I'm also
10 asking, with regard to that, that we get disclosure
11 on whatever duress defense the defense has noticed
12 that they intend to provide.

13 We filed our motion pursuant to Rule 16
14 and Rule 26.2, except that we had not received a
15 notice of defenses by that point. It was after I
16 filed the motion that we received the notice of
17 defense which has now identified duress as the
18 defense.

19 I sent Mr. Rocha an email asking him for
20 specific items. I've asked for -- I've asked for
21 any reports or documents or statements to support
22 the duress claim. I've asked for the names and
23 dates of birth of witnesses who will support that
24 claim, what -- a list of anticipated witnesses and
25 what they'll say at trial. I've also asked for the

1 defendant's wife's name and her date of birth and
2 her A-File number, given the claim that has been
3 made in the motion that Mr. Rocha has put forth to
4 the District Court regarding his request to submit
5 the duress defense to the jury.

6 I think we're entitled to the disclosure,
7 Judge, for a few reasons. First, the defendant had
8 a previous attorney. It was Rudy Valenzuela. And
9 he signed our disclosure agreement back in June of
10 2015. This agreement, then, would bind any other
11 attorney that appears after Mr. Valenzuela.

12 There was a stipulation signed in which
13 Mr. Rocha substituted in on September -- yeah,
14 September 4th, 2015. I think Mr. Rocha is bound by
15 this agreement, and everything that I have asked
16 for specific to the duress defense and any other
17 material in Mr. Rocha's possession I think would be
18 covered in this disclosure agreement.

19 Subsequent to that, once Mr. Rocha
20 substituted in in September, he asked me by email
21 to provide him with discovery. He made that
22 request both on the 29th of September and the 30th
23 of September of last year. We complied with that
24 request. By making our request now, I think Rule
25 16 has been triggered, and I believe the defendant

1 is bound by Rule 16 to give us disclosure.

2 Moreover, Judge, on January 14th of this
3 year, District Court Judge Jorgenson published a
4 scheduling order, and point 4 outlines the
5 disclosure requirements of the parties, and point
6 4(a) requires disclosure within the possession,
7 custody, and control of a party, and it should be
8 disclosed pursuant to Rule 16 and case law. Also
9 point 4(b) requires disclosure to be made within
10 seven days of a party's request. We made our
11 request for the duress disclosure on the 16th of
12 February of this year.

13 So given all of the information that I
14 provided, the disclosure notice, the scheduling
15 order -- or the disclosure agreement, excuse me,
16 the scheduling order, and Rule 16 itself, I believe
17 the defendant is bound to provide us with the
18 disclosure that we've asked for, and I'd ask the
19 Court order it.

20 THE COURT: Thank you. Ms. Furtado, give
21 me a list of that again, if you would, please, I'm
22 sorry, the information you're requesting.

23 MS. FURTADO: I'm asking for any reports,
24 documents, statements to support the duress claim.
25 I'm asking for names and dates of birth of

1 witnesses the defendant intends to -- intends to
2 bring forward at trial to support the duress claim.

3 I'm asking for a list of witnesses and
4 what those witnesses would be anticipated to
5 testify to at trial. And I'm specifically asking
6 for the defendant's wife's name, her date of
7 birth, and her A-File number.

8 And Judge, if this isn't the only material
9 that -- whatever other material the defendant
10 intends to provide, you know, to go to trial and
11 introduce in his case in chief, we would be asking
12 for that as well.

13 THE COURT: Okay. Thank you.

14 Mr. Rocha?

15 MR. ROCHA: We'd be happy to provide that.
16 I don't see any problem with that.

17 THE COURT: Okay. Thank you.

18 Then I'm going to go ahead and grant the
19 Government's motion requesting production of
20 reciprocal discovery. It's my understanding
21 Mr. Rocha will provide that information, and if
22 there's any problem, just let me know.

23 MS. FURTADO: Thank you.

24 THE COURT: We now have the other two
25 motions, the motion to suppress statements and the

1 amended motion to dismiss the indictment. I'm
2 going to leave it up to the two of you as to which
3 you think would be appropriate to address first.

4 So why don't -- maybe, Mr. Rocha, they're
5 your motions, so I don't know if you want to --

6 MR. ROCHA: I think the one that may take
7 the longest would be the 1326(d), the collateral
8 attack, so if it's okay with the Court, we'd like
9 to pursue or start with that one first.

10 THE COURT: Sure. So that's the motion to
11 dismiss then, so --

12 MR. ROCHA: That's correct.

13 THE COURT: Okay. So please go ahead
14 then. Ms. Furtado, go ahead.

15 MS. FURTADO: Judge, we have -- we have
16 our witnesses on the motion to suppress. We would
17 be presenting testimony on all of the matters, I
18 mean, both the 1326 --

19 THE COURT: Yeah.

20 MS. FURTADO: -- and the motion to
21 suppress, so I was wondering if maybe, and
22 Mr. Rocha, I don't know if you're willing to do
23 this, if we could begin presenting our witnesses
24 and then save our arguments for after the witnesses
25 are presented.

1 THE COURT: They do sort of dovetail, I
2 understand.

3 Mr. Rocha, do you have any objection to
4 that?

5 MR. ROCHA: No, that's fine.

6 THE COURT: Okay. So then what we're
7 going to do then -- thank you, Ms. Furtado. So
8 I'll let the Government go ahead and proceed. Are
9 there any -- other than calling the witnesses, is
10 there any other issues you want to discuss before
11 we begin with the witnesses?

12 MS. FURTADO: I do.

13 THE COURT: Please.

14 In regards to the motion to suppress the
15 statements, we will not be offering the second
16 statement in 2009. So in -- just to talk a little
17 bit about the facts that we believe will by
18 elicited here today --

19 THE COURT: Okay.

20 MS. FURTADO: -- in 2009, the defendant
21 was first apprehended on the 12th of January.
22 There was a process that he went through with
23 immigration. After that process, he was turned
24 over to a local authority for extradition.
25 Ultimately, two days later, the extradition was

1 declined, and the defendant was returned on the
2 night of the 14th, the early hours of the
3 15th, back to border patrol.

4 At that point the process was redone,
5 essentially. There was -- the defendant was
6 considered for criminal 1326 charges, and he was
7 given -- he gave a statement. The agents recorded
8 that statement again, and they documented all of
9 this.

10 We would not be -- I do not intend to
11 offer testimony or evidence with regard to that
12 second statement. If the Court decides to preclude
13 that statement, I am okay with that. But the first
14 statement that's taken on the 12th, that's the
15 statement that we would be -- we would be
16 ultimately okay with just proceeding on the first
17 statement on the 12th.

18 Judge, I would like to say this though.
19 In my motion and what I believe is that there was
20 no -- there was no violation of the law. There
21 wasn't a Miranda violation. There wasn't a McNabb
22 violation. There was not a voluntariness violation
23 that happened on the 15th. He ultimately was
24 declined for criminal prosecution on the 15th.

25 So I do not believe that there's a legal

1 violation, but given the way the facts have laid
2 out, we're not proceeding on that particular
3 statement, and we would not intend to use that at
4 trial.

5 THE COURT: So it's my understanding, I
6 know you're not conceding the legal issues, but in
7 terms of what we're dealing with, it's my
8 understanding that the only statement at issue for
9 2009 is the statement of January 12th, 2009. And
10 while not conceding whether or not there was any
11 type of a legal violation for the second statement
12 of January 15th, 2009, it's my understanding the
13 Government does not intend to utilize that
14 statement of January 15, 2009, in any way at trial.

15 MS. FURTADO: That's correct, Judge.

16 THE COURT: Given that, Mr. Rocha, I'm
17 presuming, then, we will -- given that, I mean, I
18 don't think I need to find, I think there is a
19 representation by the Government they're not going
20 to use that second statement, so that will be -- so
21 it seems to me the evidence should be limited to
22 the statement that was given on January 12, 2009,
23 with that representation.

24 MR. ROCHA: That's fine, Your Honor. If
25 the Government wants to stipulate to that, I'm fine

1 with that.

2 THE COURT: Okay. And we'll so stipulate,
3 so based upon that stipulation.

4 Anything else, Ms. Furtado?

5 MS. FURTADO: No.

6 THE COURT: Mr. Rocha, anything else from
7 your standpoint before we begin calling the
8 witnesses?

9 MR. ROCHA: No, Your Honor.

10 THE COURT: Okay. Thank you.

11 Ms. Furtado?

12 Is there anything else? Go ahead.

13 MS. FURTADO: No. No, Your Honor. I'm
14 sorry.

15 MS. GRANOFF: We were just trying to
16 determine which set of witnesses we were going to
17 present first.

18 THE COURT: Thank you.

19 MS. FURTADO: Your Honor, the Government
20 will call Adam Letavay to the stand.

21 ADAM LETAVAY, WITNESS, SWORN

22 THE CLERK: Please have a seat.

23 (Inaudible.)

24 THE WITNESS: Adam Letavay, L-e-t-a-v-a-y.

25 THE COURT: Ms. Furtado?

1 DIRECT EXAMINATION

2 BY MS. FURTADO:

3 Q. Good afternoon, Agent. Could you tell us
4 where you work, please.

5 A. Sure. Right now I'm detailed at the San Diego
6 sector mobile response team.

7 Q. And you said you're -- are you a border patrol
8 agent?

9 A. Yes.

10 Q. How long have you been a border patrol agent?

11 A. Approximately eight-and-a-half years.

12 Q. Does it take specialized training to become a
13 border patrol agent?

14 A. Yes, it does.

15 Q. Can you tell us what that specialized training
16 is.

17 THE COURT: Ms. Furtado, I'm sorry to
18 interrupt, but I should have noted, it's my
19 understanding that there is a representative of the
20 Government here --

21 MS. FURTADO: Yes, sir.

22 THE COURT: -- and that -- is that Border
23 Patrol Agent Gomez?

24 MS. FURTADO: Yes, Your Honor.

25 THE COURT: Okay. So for the record, we

1 should have identified that Border Patrol Agent
2 Adrian Gomez is also present. The Rule has not
3 been invoked as to him because he has been
4 identified as the Government's representative.

5 Okay. I guess the microphone at the
6 podium works better, so you may want to come up.
7 It doesn't matter to me, but I think so we can get
8 you on the record, it's probably a good idea.

9 So thank you. I'm sorry to interrupt.
10 Okay. Thank you.

11 MS. FURTADO: No problem.

12 BY MS. FURTADO:

13 Q. Okay. So let's back up. I asked you what
14 specialized training it takes to become a border
15 patrol agent. Take us through that, please.

16 A. Yeah. We start with the basic academy, which
17 when I attended was approximately five-and-a-half
18 months in Artesia, New Mexico, live-in academy.
19 Then from there you go to the field training unit
20 and post academy training.

21 Q. Okay.

22 A. And from there you're released to the field.

23 Q. All right. Tell us what types of things you
24 learn when you're in the basic academy.

25 A. Arrest techniques, immigration law, applied

1 authority, use of a firearm, driving. There's
2 physical fitness testing, Spanish.

3 Q. Do you speak Spanish?

4 A. Some.

5 Q. Do you speak Spanish well enough that you can
6 have a conversation?

7 A. Conversation, no.

8 Q. Do you speak Spanish well enough to give
9 commands and perhaps do your field questioning?

10 A. Yes.

11 Q. Now, you said it takes five months to go
12 through basic training?

13 A. When I went through, it was approximately
14 five-and-a-half months.

15 Q. Do you have to successfully complete it before
16 you go to your field training?

17 A. You do.

18 Q. So what happens at field training? What types
19 of things do you learn there?

20 A. Field training you get area orientation for
21 the area you're going to be working, responsible
22 for. You get to learn how your sector policies and
23 procedures work, as opposed to what you learned
24 overall in the academy.

25 You go over arrest techniques again, vehicle

1 stops, things that you can really only cover on the
2 job.

3 Q. Do you have to successfully complete field
4 training in order to become a border patrol agent
5 that's out on your own?

6 A. Yes.

7 Q. Were you able to successfully complete basic
8 training and field training?

9 A. Yes, I was.

10 Q. You said there's post academy training. What
11 is that?

12 A. That's a classroom setting. So you go over
13 Spanish and law mostly, and there's a six-month and
14 10-month exam that you also need to pass to
15 successfully complete the post academy.

16 Q. And were you able to complete your six-month
17 and 10-month exam?

18 A. Yes.

19 Q. Have you had specialty assignments since
20 becoming a border patrol agent?

21 A. Yes, I have.

22 Q. What have been your specialty assignments?

23 A. I joined the air mobile unit, which is part of
24 the special operations attachment, which just
25 changed name into the mobile response team. And

1 that was a two-week selection course, as well as
2 two weeks of training. And I had two weeks in
3 El Paso on mobile response team specialized
4 training with BORTAC.

5 Q. Okay. What does the training consist of in
6 order to get to a specialized unit like mobile air
7 unit or mobile response team?

8 A. You've got extra firearms training, physical
9 fitness training, do a lot of surveillance,
10 intelligence-type gathering.

11 Q. And as a border patrol agent during your field
12 training, were you making contact with people who
13 were perhaps in the -- in areas that might indicate
14 that you need to ask them questions about their
15 citizenship and documentation?

16 A. Yes. My unit actually specializes in arduous
17 terrain and areas that aren't readily accessible.

18 Q. And how long have you worked in that unit,
19 with that kind of specialty?

20 A. I've been there for about six-and-a-half
21 years.

22 Q. So let me ask you, do you recall an incident
23 that occurred the 1st of May, 2015, around
24 midnight, at the Lukeville port of entry?

25 A. Yes.

1 Q. What was your assignment that night?

2 A. That night we were actually pulled back to the
3 field for a quick reactionary force down at the
4 port of entry.

5 Q. What is a quick reactionary force?

6 A. They wanted us to be ready because there were
7 reports of some violence further south, and if
8 anything were to come further north, a United
9 States citizen that was injured or anything of the
10 sort, they wanted somebody to be there.

11 Q. And is that what you've been trained to do and
12 circumstances to respond to?

13 A. Yes.

14 Q. All right. You said there was some reports of
15 violence that night. On the U.S. side or the
16 Mexico side?

17 A. On the Mexico side.

18 Q. And from the position you were in -- let's
19 back up a second. Where were you around midnight
20 that night?

21 A. We were in a parking lot just north of the
22 port of entry.

23 Q. And from your location, were you able to hear
24 anything that would, for you, corroborate the
25 violence that you'd been told about?

1 A. At one point early in the night we heard what
2 might have been shots southwest of the port of
3 entry, but unconfirmed.

4 Q. Okay. Was anybody with you when you were on
5 this assignment?

6 A. Yes. Agents Wagner and Swickheimer.

7 Q. Are they also part of the mobile response
8 team?

9 A. Yes.

10 Q. And were they also assigned that night to
11 station themselves at the Lukeville port of entry
12 given these reports of violence?

13 A. Yes.

14 Q. All right. About midnight, did you get a
15 report or a radio call from a mobile surveillance
16 operator?

17 A. Yes.

18 Q. And what information did that mobile
19 surveillance operator give you?

20 A. He indicated that there were two vehicles at
21 the border fence, and they were moving northbound
22 across the border road.

23 Q. And how did you respond to that information?

24 A. We ten-foured them on the radio, said that
25 we'd head that way, and we drove in that direction.

1 Q. Okay. So help me to get sort of an
2 understanding of your position as it relates to the
3 Lukeville port of entry. You said earlier that you
4 were at the parking lot outside the Lukeville port
5 of entry?

6 A. Yeah, almost immediately north, just right off
7 the road.

8 Q. And so the radio operator giving you this
9 information about two people on the border
10 road, what direction did you go?

11 A. We had to drive south to the border road and
12 then eastbound along the border fence.

13 Q. And was the radio operator giving you
14 information as to where he had last seen the two
15 people?

16 A. Yes. He said that he had them across the
17 border road, and he lost them in a small grove of
18 trees.

19 Q. Okay. And was he -- he could see you as you
20 were responding to this incident?

21 A. After -- after a brief drive, yeah. From
22 where we were parked he couldn't see us, I don't
23 believe. I've never been up there. But once we
24 got to the border road he could definitely see us.

25 Q. All right. About how long did it take you to

1 respond to the call that -- to the radio call that
2 this mobile surveillance operator had made?

3 A. We responded as soon as they called us.

4 Q. And then did you ultimately find the two
5 people that the camera operator was referring to?

6 A. Yes.

7 Q. So between the time that it took you to
8 respond or first get the call from the mobile
9 surveillance operator to actually making contact
10 with the two -- these two people, how long did it
11 take?

12 A. Between five and 10 minutes.

13 Q. I'm sorry?

14 A. Between five and 10 minutes, roughly.

15 Q. All right. And do all three of you respond to
16 the mobile surveillance operator's call?

17 A. Yes.

18 Q. Is it -- where you were, I mean, it's
19 midnight, so I would assume it was dark.

20 A. Yes, very.

21 Q. Where you were, were there lights where you
22 could see where you were going and the path that
23 you were taking?

24 A. Where we started, yes. The Lukeville port of
25 entry always has -- it's almost like a football

1 stadium. There's lights all over, so you can see
2 there. Once you get down on the border road, it's
3 a lot darker.

4 Q. Were you -- were the two people that were
5 described by the mobile surveillance operator, were
6 they immediately visible?

7 A. No.

8 Q. Okay. So tell me what you do. So once you
9 get -- once you respond to the call, do you all get
10 in a vehicle?

11 A. Yes. We responded in a vehicle. It wasn't
12 close enough to walk to.

13 Q. Okay. And then what happens once you're in
14 the vehicle?

15 A. We maintain communications with the scope
16 operator, and he wanted to give us coordinates
17 that -- in San Diego we work in a lot of
18 mountainous terrain, so it's just a lot easier to
19 go to a known location by description rather than
20 by coordinates. So we asked him to put us in in
21 the last place that he had visual, which was at the
22 northern edge of the border road.

23 So he was able to stop us within about 15
24 meters of where he believed they crossed the border
25 road to the north.

1 Q. Okay. So once you get to that location -- I
2 assume you drive there. Once you get there what
3 happens?

4 A. We get out on foot, and it was dark, so we had
5 to utilize flashlights, and we looked for foot sign
6 from the border fence and along the border road.

7 Q. Is it lit there that you can see the foot
8 sign?

9 A. Yeah, not without a flashlight.

10 Q. So were you using a flashlight to look at the
11 foot sign?

12 A. Yes.

13 Q. And what were you able to observe from the
14 foot sign?

15 A. We were able to find -- I was able to find two
16 sets of prints from the border fence heading kind
17 of north-northeast across the road, into the grove
18 of trees.

19 Q. Now, the information you had from the mobile
20 surveillance operator, was he -- did he have
21 constant surveillance of these folks throughout
22 your interaction with him on the radio?

23 A. No. He lost them at the edge of the road
24 where the trees started. He was not able to see
25 them.

1 Q. And how were you able to find them then?

2 A. I was able to follow the foot sign from the
3 fence across the road into the trees, and that's
4 where the two subjects were concealed.

5 Q. And were Agents Wagner and Swickheimer with
6 you?

7 A. Yes.

8 Q. Were you all entering the grove together, or
9 were you in different positions?

10 A. We all entered the grove together, almost in a
11 straight line.

12 Q. Okay. How were you dressed that night?

13 A. In full rough duty uniform.

14 Q. So I'm -- I don't know what that means. Can
15 you describe that.

16 A. Green pants, green uniform shirt, name
17 plate, badge, and patches on each shoulder,
18 Homeland Security and Border Patrol.

19 Q. And when you approach -- when you approach the
20 grove of trees, are you announcing yourselves?

21 A. Yes.

22 Q. And how do you do that?

23 A. Each person does it differently. I say, "U.S.
24 Border Patrol." Some of our Spanish speakers,
25 native speakers, will announce in Spanish. I say,

1 "U.S. Border Patrol."

2 Q. On this particular night, did you identify
3 yourself when you approached the grove of trees?

4 A. Yes.

5 Q. And what did you find when you entered the
6 grove of trees?

7 A. Two subjects spaced probably about five feet
8 apart concealing themselves in some of the lower
9 brush.

10 Q. What do you do when you see them concealing
11 themselves?

12 A. First thing normally in that circumstance is
13 to ask for hands. You want to make sure you see
14 their hands, make sure, officer safety, obviously,
15 that they don't have any weapons or anything.

16 And then I approached the subject. Eric
17 approached the other subject, and Chris was kind of
18 brought in between.

19 Q. What were you and Eric doing?

20 A. I patted down my subject for immediate weapons
21 in the waist area and then put handcuffs on him.
22 Eric I assume was doing the same thing, but I
23 wasn't -- I was focused on my guy. And Chris was
24 in the middle of asking the 213 questions.

25 Q. So what does "the 213 questions" mean?

1 A. Basically it consists of their country of
2 origin and if they have any documentation to be in
3 the United States.

4 Q. Did you hear the responses to Chris' -- Agent
5 -- Chris is Agent Wagner?

6 A. Agent Wagner, yes, I'm sorry.

7 Q. Did you hear the responses to Agent Wagner's
8 questions?

9 A. I heard the response, "No," as to if he had
10 any immigration documents to be able to remain in
11 the United States, and I heard him state that he
12 was from Michoacán, which is a state in Mexico.

13 Q. Now, when you are making contact, you said you
14 were patting down the person you made contact with.
15 Do you -- did you find any weapons?

16 A. No.

17 Q. Did you have your weapon drawn at that point?

18 A. No.

19 Q. Was there -- did any -- do you recall that any
20 of the other members of your group had their
21 weapons drawn?

22 A. I don't believe so.

23 Q. Okay. When you -- when Chris is asking
24 questions, do you recall seeing if he had a weapon
25 drawn, or do you recall seeing him have a weapon

1 drawn?

2 A. I do not, and normally, especially being a
3 small team as we are, if one person has their
4 weapon out, usually the whole team does.

5 Q. And do you recall having your weapon out?

6 A. I definitely did not, no.

7 Q. Okay. So when you -- when Chris is asking the
8 questions -- hold on. Let me back up here a
9 second.

10 When you're in this grove of trees, are you
11 looking around for other people?

12 A. Multitasking. We are looking around. We had
13 the report of two, and we knew we had two in front
14 of us. We were addressing them first. Chris would
15 be looking more, and then Eric arrived because he
16 wasn't hands-on with anybody at the time.

17 Q. Okay.

18 A. But you're constantly looking around.

19 Q. So you had had some information that there was
20 violence across the border. Did that information
21 change the way you responded to the information
22 that the mobile surveillance operator had given
23 you?

24 A. No.

25 Q. All right. What are you physically observing

1 about the people that you've made contact with,
2 that the three of you made contact with?

3 A. The first thing I always look at is their
4 hands. You want to make sure there's nothing in
5 their hands, their hands are visible. Then just a
6 general impression of the person, what kind of
7 stance they're in, if they're standing, if they
8 appear to be hiding anything, you know, leaning one
9 way or the other. Just general appearance. Are
10 they injured? I am an EMT so that's kind of one
11 thing I just kind of look at on the side. Just try
12 to get a general feel.

13 Q. Did you notice that either of the two people
14 you made contact with had any injuries?

15 A. No. Neither of them appeared injured.

16 Q. Were either of the two people combative?

17 A. No.

18 Q. Did they seem hostile to you?

19 A. No.

20 Q. What was your -- what was your impression of
21 their attitude toward you?

22 A. They seemed a little grumpy, honestly.

23 Q. And as an EMT, did I already ask you, did you
24 notice any injuries?

25 A. Yes, you did, and no, I did not.

1 Q. All right. What happens once the field
2 questions are asked?

3 A. Once we've determined that they're going to be
4 taken into custody, then they are taken to -- we
5 had a marked vehicle at the time which had the cage
6 in it --

7 Q. Uh-huh.

8 A. -- and they were put in the back of that.
9 They are searched more thoroughly before they're
10 put in, their belongings are searched, and then
11 there's an apprehension sheet that's filled out,
12 and then they're transported to the station for
13 further processing by the processing team.

14 Q. On this particular occasion, do you recall who
15 transported the two people?

16 A. Agent Wagner.

17 Q. Was one of the two people later identified for
18 you as Ramon Ramos-Zepeda?

19 A. Yes.

20 Q. And do you have an independent recollection of
21 that person?

22 A. I do.

23 Q. And I would ask you to look through the
24 courtroom, see if you can identify the person that
25 you recall as being Ramon Ramos-Zepeda in the

1 courtroom today.

2 A. I do.

3 Q. Can you point him out and just let us know an
4 article of clothing, perhaps --

5 A. That gentleman right there in the orange.

6 Q. Now, have you ever had an occasion where
7 somebody expressed fear to you when you first made
8 contact with them out in -- as part of your duties
9 as a border patrol agent?

10 A. Yes, I have.

11 Q. And are you familiar, then, with some of the
12 signs or body language that they might exhibit when
13 they are expressing that fear or feeling afraid?

14 A. Yes. It's fairly obvious usually.

15 Q. Did you notice any of those signs or behaviors
16 in Mr. Zepeda on the 1st of May, when you made
17 contact with him?

18 A. No.

19 Q. Now, is fear something -- is fear something
20 that you would note and perhaps write on a field
21 826?

22 A. Yes.

23 Q. Is it something that you would perhaps
24 communicate to other members of your team or the
25 processing team?

1 A. Yes, especially the processing team because it
2 takes a different path.

3 Q. What -- I'm sorry. Can you explain that?

4 A. Processing has to go a different route, and
5 different notifications need to be made on their
6 behalf if there is a credible fear.

7 Q. In this particular instance with
8 Mr. Ramos-Zepeda, did you believe that there was a
9 need for this different path, that there was fear
10 being communicated to you that you needed to then
11 notify the processing team or some other members of
12 your team about?

13 MR. ROCHA: Your Honor, I object to the
14 line of questioning. The issue here is
15 suppression. Government counsel's already trying
16 to go to the issue of duress, which is not before
17 the Court.

18 The agent testified that he was placed in
19 the vehicle and taken to the processing station.
20 Whether or not he was fearful does not go to the
21 issue of suppression at this point, and also the
22 question's compound, by the way.

23 THE COURT: Ms. Furtado?

24 MS. FURTADO: Judge, the -- one of the
25 issues in the motion was voluntariness, and so I do

1 need to prove that the statement that was given or
2 that was taken from the agent was voluntary in
3 nature, and so that's the reason why I'm asking the
4 fear questions, because it is the totality of
5 circumstances that the Court needs to consider when
6 considering whether the statements are voluntary.

7 I mean, the argument that we'll make later
8 is that these were -- this was a Terry stop
9 situation where the agents did have the legal
10 ability to ask the questions they have, but the
11 voluntariness question is separate, and I do need
12 to address that as well through the questions that
13 I elicit through this witness.

14 THE COURT: Mr. Rocha?

15 MR. ROCHA: Your Honor, according to the
16 Government's discovery, Mr. Ramos actually invoked
17 his Fifth Amendment right after the agents had
18 already processed. The agent's already testified
19 that they'd taken him to the station where they
20 processed him first. That's his testimony.

21 The information disclosed by the
22 Government was that he invoked his Fifth Amendment
23 right, so there's nothing else to ask.

24 THE COURT: Well, he invoked his Fifth
25 Amendment right later, not at the initial stop.

1 I'm going to let this go a little farther, but I'm
2 not sure. I'll let it go a little farther.

3 So the objection is overruled.

4 BY MS. FURTADO:

5 Q. Agent, was there anything that you noted on
6 the field 826 that you believe needed to be
7 communicated to the processing team regarding fear
8 that the defendant might have had?

9 A. No.

10 MS. FURTADO: Your Honor, I forgot to
11 ask, but I would ask that the record reflect that
12 the witness has identified the defendant.

13 THE COURT: The record will reflect that.
14 Thank you.

15 MS. FURTADO: Thank you. I just need one
16 second.

17 THE COURT: Sure.

18 MS. FURTADO: I don't have any other
19 questions for this witness.

20 THE COURT: Okay. Thank you.

21 Mr. Rocha?

22 Yeah, thank you for coming to the podium
23 so we can make sure we get you recorded. Thank
24 you.

25 CROSS-EXAMINATION

1 BY MR. ROCHA:

2 Q. Good afternoon, Agent. I want to ask you a
3 little bit -- so you mentioned that you received a
4 lot of training during your time in the academy.
5 Does that training involve also filling out police
6 reports?

7 A. There's some basic report writing training.

8 Q. Can you explain what "basic" means.

9 A. It's a long time ago, but basically the gist
10 of all of our training as far as paperwork was
11 concerned was you need to be able to write down
12 enough facts to where you're not writing down too
13 much, but you're writing down enough to where you
14 can remember the incident later so that you're not
15 coaching yourself, that it was the gist of
16 everything we did. It wasn't a whole lot of
17 writing per se.

18 Q. So part -- so part of your -- you said you
19 were an officer for six years?

20 A. I've been an agent for eight-and-a-half years.

21 Q. Eight-and-a-half years. And during eight-
22 and-a-half years, you've filled out countless
23 reports?

24 A. Narratives. I don't know that I'd call them
25 reports.

1 Q. Can you explain a narrative.

2 A. A narrative would be our version of what
3 happened. With my unit, we have processing teams
4 that do the actual casework. We're normally only
5 writing a narrative of our recollection of the
6 events as pertaining to that case.

7 Q. And as part of your narrative, you include all
8 the appropriate, important information?

9 A. As we see fit, yes.

10 Q. Nothing that's not -- nothing that's important
11 is left out?

12 A. I wouldn't necessarily say that all the time.
13 At the time what we think is pertinent is what we
14 write down.

15 Q. And in this case, you did actually fill out a
16 narrative report; is that correct?

17 A. Yes, I did.

18 MR. ROCHA: Your Honor, may I approach the
19 witness?

20 THE COURT: Sure.

21 MR. ROCHA: I'm approaching the witness
22 with what's -- it's Defense Exhibit I believe 59.

23 It's Agent Letavay -- is that correct?

24 THE WITNESS: Letavay.

25 MR. ROCHA: I'm going to call it, for lack

1 of a better word, Your Honor, a police report.

2 THE COURT: Okay.

3 MS. GRANOFF: Disclosure page number,
4 counsel, please.

5 MR. ROCHA: Yes. Five.

6 MS. GRANOFF: Thank you.

7 BY MR. ROCHA:

8 Q. Do you have your report in front of you, sir?

9 A. I do.

10 Q. Is that your report?

11 A. Yes.

12 Q. Did you fill out your report after the
13 incident?

14 A. A little while after the incident, yes.

15 Q. What does that mean?

16 A. We were already back in San Diego when we were
17 notified that there was a case, and we filled it
18 out at that time.

19 Q. So is that an hour? Two days? Four days?

20 A. Several days. I don't remember exactly how
21 long. Here it looks like six days.

22 Q. So six days -- six days after the
23 incident, you actually did your narrative?

24 A. Yes.

25 Q. Now, can you tell us, according to your

1 report, what time did you respond to the incident?

2 A. Approximately 12:15 --

3 Q. Okay.

4 A. -- on May 1st.

5 Q. Now, according to your report, it says that

6 there was a camera operator that warned you or

7 notified the agents that there was someone or some

8 persons that had crossed the port of entry, or I'm

9 sorry, the U.S./Mexico border?

10 A. Correct.

11 Q. And then you responded to that?

12 A. Yes.

13 Q. And did you say I believe on direct it was

14 five minutes, or how long did it take to you

15 respond?

16 A. It took us about five minutes to get there.

17 We responded immediately.

18 Q. Okay. And I just want to make sure, because I

19 believe your testimony was five to 10 minutes, so I

20 just want to make sure it's correct.

21 Okay. So you said in your report that the

22 scope operator -- so is that a camera? I'm not

23 sure what that means.

24 A. Yes.

25 Q. So the scope operator advised you there were

1 two subjects that had crossed and that they were
2 located north on the border road, is that right,
3 according to your report?

4 A. They were located -- when he first saw
5 them, they were on the southern end of the border
6 road against the fence. When he lost them, they
7 were north of the border road in grove trees.

8 Q. Okay. But just answer the question, please.

9 He said that they were immediately north of
10 the border road. Is that what's in your report?
11 It says, "Scope operator advised us there were two
12 subjects that stopped in a small grove of trees."
13 That's in your report.

14 A. Yes, that's correct.

15 Q. Okay. So you knew where they were?

16 A. Approximately.

17 Q. Okay. So then you immediately went out
18 there, and the scope operator, according to your
19 report, says that he could not see that they had
20 actually gone any farther north.

21 Is that right?

22 A. That is correct.

23 Q. Now, you said in your report that you saw foot
24 signs.

25 A. Yes.

1 Q. And you followed the foot signs to, what is
2 it, the small grove of trees?

3 A. Uh-huh.

4 Q. Okay. And that's where you actually saw the
5 two subjects?

6 A. That is correct.

7 Q. Okay. Now, when you saw the two subjects,
8 according to your report, you said in there that
9 they were taken into custody at 12:20.

10 A. Correct.

11 Q. So that's the word you used, "custody"?

12 A. Correct.

13 Q. Now, in your report, does it say that you
14 heard the other agent advise him of some warnings
15 or asked him about their nationality?

16 A. In the report, no.

17 Q. And in that report, did you ask any of the two
18 subjects about where they were from, where they
19 were coming from, where they were going?

20 A. I did not.

21 Q. And so when you said they're taken into
22 custody, you then loaded them on -- I'm sorry. You
23 transported them onto a vehicle; is that right?

24 A. They were walked to the vehicle.

25 Q. They were walked to the vehicle, and then they

1 were taken inside the vehicle; right?

2 A. There was an app sheet filled out, there was
3 the rest of the searching, and then they were put
4 in the vehicle and transported to the station.

5 Q. And in your report it says it's without
6 incident.

7 A. Yes.

8 Q. So there was no quarreling, no wrestling?

9 A. No.

10 Q. The subjects were cooperative?

11 A. Correct.

12 Q. Now, you said that it was dark out there?

13 A. Yes.

14 Q. That you had to use your flashlight to find
15 the footprints?

16 A. That's correct.

17 Q. And there were three agents?

18 A. Three.

19 MR. ROCHA: Your Honor, I have no further
20 questions.

21 THE COURT: Okay. Thank you.

22 Ms. Furtado?

23 MR. ROCHA: I'm sorry. May I retrieve the
24 report?

25 THE COURT: Yes, please. Thank you very

1 much. Thank you. Thank you, Mr. Rocha.

2 REDIRECT EXAMINATION

3 BY MS. FURTADO:

4 Q. Agent Letavay, do you write a report for every
5 apprehension that you do?

6 A. No.

7 Q. When do you write reports?

8 A. When there's going to be an associated case
9 where there are criminal charges.

10 Q. Do you have access to your field 826?

11 A. Yes.

12 Q. When you write a report?

13 A. Not always.

14 Q. In this particular instance, did you have
15 access to the field 826 that was created for this
16 incident?

17 A. I did not.

18 Q. And so was this report written based on --
19 what?

20 A. My vast recollection.

21 Q. And do you -- when you write these reports,
22 are you writing every detail?

23 A. No.

24 Q. Why not?

25 A. One, it's hard to remember several days later.

1 Also, you don't want to write things that you're
2 not a hundred percent sure about, so anything I
3 write is I'm 100 percent sure, and it's to jog my
4 memory later if needed.

5 Q. Were you able to review your report before
6 testifying today?

7 A. Yes.

8 Q. And was it -- did it jog your memory of the
9 events from May 1st, 2015?

10 A. Yes.

11 Q. And what do you recall after reading the
12 report about -- about what the scope operator told
13 you he saw about the two aliens, with regard to the
14 two aliens?

15 A. When he first saw them -- because there's
16 quite a bit of talking back and forth as you drive
17 in there trying to figure it out, especially
18 because it's not our area. I recall him telling us
19 that he first spotted them at the fence on the
20 south side of the road. They crossed the road
21 north into the trees, and he lost them.

22 And from there he said that he's pretty sure
23 he would have seen them continue north, so he
24 thought they were somewhere in that area.

25 Q. And were you able to immediately see them

1 whenever you got to that area?

2 A. No. We had to ask the scope operator what his
3 best idea was once he could see us to put us in the
4 area where he thinks they crossed the road, and
5 that's where we looked for foot sign.

6 Q. Was your previous testimony that you had to
7 use the foot sign to ultimately find the two
8 aliens?

9 A. That's correct. That's how we found them.

10 Q. All right. Now, defense counsel asked you
11 about the custody at 12:20 a.m. Do you --

12 MS. FURTADO: May I approach the
13 witness, Your Honor?

14 THE COURT: Sure.

15 BY MS. FURTADO:

16 Q. I'm going to show you what's been disclosed on
17 page four.

18 Is that your report?

19 A. I'm sorry?

20 Q. Is that your report?

21 A. Yes.

22 Q. Okay. I'd ask you to look at the sentence
23 with regard to the 12:20 a.m. custody.

24 Could you find that in the paragraph?

25 A. Yes.

1 Q. Okay. Now, with regard to custody at
2 12:20 a.m., did that occur before or after the
3 field questions happened?

4 A. After.

5 MS. FURTADO: I don't have any other
6 questions for this witness, Your Honor.

7 THE COURT: Okay. Thank you. May this
8 witness be excused?

9 MS. FURTADO: Yes, sir.

10 THE COURT: Okay. Thank you very much for
11 your time.

12 THE WITNESS: Thank you.

13 MS. FURTADO: The Government calls Agent
14 Christopher Wagner.

15 THE COURT: Okay. Thank you.

16 CHRISTOPHER WAGNER, WITNESS, SWORN

17 THE CLERK: (Inaudible).

18 THE WITNESS: Christopher
19 Wagner, W-a-g-n-e-r.

20 THE CLERK: Thank you, sir.

21 DIRECT EXAMINATION

22 BY MS. FURTADO:

23 Q. Good afternoon. Could you tell us where you
24 work, please, sir.

25 A. I work out of San Diego sector, specifically

1 the air mobile unit or San Diego strike team now.

2 Q. Are you a border patrol agent?

3 A. I am.

4 Q. How long have you been a border patrol agent?

5 A. Just over eight years, eight-and-a-half years.

6 Q. How long have you been on the San Diego strike
7 team?

8 A. I've been with them for just under six.

9 Q. Does it take specialized training to become a
10 border patrol agent?

11 A. Yes.

12 Q. Can you tell me what that specialized training
13 is.

14 A. You have to go to the academy, a 12-week
15 academy, plus an additional eight weeks of Spanish,
16 and then post academy training, things of that
17 nature.

18 Q. Did you, when you went through that basic
19 academy, do what you described with the Spanish?

20 A. Yes, the basic academy is the 12-week basic
21 academy.

22 Q. And did you have to learn Spanish?

23 A. I had to take a an eight-week course at the
24 basic academy. I was still in Artesia.

25 Q. Do you speak Spanish then?

1 A. I speak enough Spanish for work, where I can
2 give commands, ask specific questions. If I'm
3 going to get into an in-depth conversation, I would
4 turn that over to somebody else.

5 Q. But do you speak enough Spanish that you can
6 ask and understand the field questions?

7 A. Yes.

8 Q. And after basic training, you said you go to
9 field training?

10 A. Yes. When you get to your station, you go on
11 to field training where, depending on the station,
12 some are six or eight weeks, some are 12 or even
13 longer, but I believe Brown Field station was about
14 12 weeks.

15 Q. Brown Field station, is that in California?

16 A. It is, San Diego sector.

17 Q. Is that where you're stationed now?

18 A. That's my home station is Brown Field station.
19 That's where I went through the FTU, the field
20 training.

21 Q. And is the field -- during your field
22 training, what kind of things are you doing?

23 A. Your field training officers are taking you
24 through your area of operation. You're learning
25 the trails, different canyons, different terrain,

1 sensor locations, learning how to follow foot sign,
2 follow various types of sign, broken branches, this
3 and that, learning how to use FLIR scopes, things
4 of that nature, basically on-the-job training.

5 Q. Were you able to successfully complete your
6 basic training and your field training?

7 A. Yes.

8 Q. Do you have post academy training that you
9 have to do as well?

10 A. There is.

11 Q. Were you able to successfully complete that
12 training as well?

13 A. Yes.

14 Q. Okay. I'd like to direct you to an incident
15 that happened the 1st of May, 2015, about midnight,
16 near the Lukeville port of entry.

17 Do you recall that event?

18 A. I do.

19 Q. Who were you with?

20 A. I was with Agents Swickheimer and Letavay.

21 Q. And what was your assignment that night?

22 A. We'd been asked to stand by near the Lukeville
23 POE because they had no mobile or the Ajo station
24 had no mobile agents during that time frame, so
25 they asked us to stand by.

1 Q. And where -- did you get a call over the radio
2 about two people that had -- that were crossing the
3 border road?

4 A. Yes.

5 Q. Can you tell me what information you received.

6 A. One of the scope operators for the Ajo station
7 said he observed two subjects approximately 400
8 meters to the east of the Lukeville POE. He had
9 them at the fence and asked if there was anybody in
10 the area that could respond. We said we were, and
11 he said for us to start coming eastbound.

12 He said they had them walking right across the
13 border road and -- laid up, meaning they stopped
14 and hid, in a small grove of trees immediately over
15 the border road.

16 Q. When -- when you got this information, did the
17 three of you, so you, Agent Swickheimer, and Agent
18 Letavay, did you respond to that information?

19 A. Yes. We immediately started driving on the
20 border road. Once we were in the scope operator's
21 picture, he told us to stop where he felt they
22 crossed.

23 Q. And were two people immediately visible to
24 you?

25 A. Not immediately visible. As soon as we

1 stopped, we located the foot sign, actually located
2 the foot sign, I believe it was right behind the
3 truck, but located the foot sign. We followed it
4 right into the grove of trees that was immediately
5 north of the border road, and there were two
6 subjects sitting there whose shoes matched the sign
7 on the border road.

8 Q. Okay. When you see the two subjects sitting
9 there, what did you do?

10 A. We approached them immediately. There was
11 no -- they didn't try to run. They didn't try to
12 fight. There was no issue. So we walked up to
13 them. Adam went to one, Swickheimer went to the
14 other, asked them real quick what country they were
15 born in, if they had immigration documents. They
16 said Mexico. They had no immigration documents.

17 They both got cuffed. Then we took them in
18 our vehicle and went back to the other side of
19 Lukeville.

20 Q. Okay. What were you wearing when you made
21 contact with the two individuals?

22 A. Full rough duty border patrol uniform.

23 Q. Can you explain what rough duty border patrol
24 uniform is, please.

25 A. Yes. Rough duty uniform is a ripstop

1 material, all green. Badge here where I have this
2 MRT logo. Badge here. Name plate. Full just
3 standard rough duty uniform. Gun belt.

4 Q. Okay. When you -- you said after Letavay
5 found the foot sign, you --

6 A. Yes.

7 Q. -- found the two aliens. When you approached
8 these two people, do you announce yourself?

9 A. Yes. In this case I believe -- I know I did.
10 I don't recall if Swick did, but I think Adam said
11 "Border Patrol" as well, walked up to them. And
12 again, nobody ran. No one tried to do anything.
13 Just sat there. And we walked up to them and did a
14 quick immigration inspection, hooked them up and
15 put them in the vehicle.

16 Q. Did you have any guns drawn when you were
17 approaching them or speaking to them?

18 A. No.

19 Q. Did you notice in this case about their
20 demeanor?

21 A. They actually seemed annoyed that we found
22 them. You get different responses from people when
23 you locate them out and about in the brush or here
24 just north off the border road, but they actually
25 seemed annoyed that we had found them.

1 Q. Now, the exchange that you had, you said you
2 asked them the field questions about citizenship
3 and paperwork. Did you ask that in English or
4 Spanish?

5 A. We ended up doing both. I usually go to
6 English immediately. If it's not understood, I'll
7 go to Spanish. Both subjects spoke some
8 English, so we were able to ask in English, and
9 then when we asked again in Spanish. It was the
10 same answer.

11 Q. Okay. And did you feel when you were asking
12 in Spanish that they were understanding the
13 questions you were asking?

14 A. Yes.

15 Q. And were you able to understand the response
16 that you got?

17 A. Yes.

18 Q. And was the response the same as you've
19 testified before, Mexico and no documents?

20 A. Yes.

21 Q. Okay. Now, the two people that you made
22 contact with, was one later identified as Ramon
23 Ramos-Zepeda?

24 A. Yes.

25 Q. And were you able to observe him on the 1st of

1 May, seeing his facial features and the way he
2 looked?

3 A. Yes.

4 Q. And I would ask you to look around the
5 courtroom today. Do you see the person you
6 encountered on May 1st identified as Ramon Ramos-
7 Zepeda?

8 A. Yes.

9 Q. Okay. Can you point him out and just tell us
10 an article of clothing that he's wearing.

11 A. The gentleman in orange.

12 MS. FURTADO: Your Honor, I would just ask
13 that the record reflect that this witness is
14 referring to the defendant.

15 THE COURT: The record will reflect that.
16 Thank you.

17 MS. FURTADO: Thank you.

18 BY MS. FURTADO:

19 Q. Agent, you said that what you observed was
20 annoyance in the two people you made contact with,
21 including the defendant.

22 Did you notice anything -- have you ever
23 encountered anybody who was afraid when you made
24 contact with them on the border or out in the
25 desert?

1 A. Yes.

2 Q. Did you observe any of those signs or physical
3 behaviors in the defendant that indicated to you he
4 was afraid?

5 A. I did not.

6 MS. FURTADO: Can I have a second, Your
7 Honor?

8 THE COURT: Sure.

9 BY MS. FURTADO:

10 Q. Ultimately, after he made contact and you said
11 they were handcuffed, were they -- were the two
12 people, including the defendant, transported?

13 A. Yes. We initially put them in my vehicle. We
14 drove back to where we were on the west side of
15 Lukeville. There's a parking lot immediately on
16 the west side of Lukeville.

17 We stood by there, filled out the apprehension
18 sheets, and called for transport. It turned out
19 transport was going to be quite extended, so I
20 drove them myself to the Ajo station.

21 Q. And during transportation, were there any
22 other questions or any other statements that were
23 made?

24 A. No.

25 MS. FURTADO: I don't have any other

1 questions for this witness, Your Honor.

2 THE COURT: Thank you.

3 Mr. Rocha?

4 CROSS-EXAMINATION

5 BY MR. ROCHA:

6 Q. Good afternoon, Agent Wagner.

7 Do you recall filling out a memorandum of
8 investigation report?

9 A. The G-166?

10 Q. That's right.

11 A. Yes.

12 Q. Do you recall when you actually completed that
13 report?

14 A. It was completed on May 7th, I believe.

15 Q. When did the incident take place?

16 A. May 1st.

17 Q. How long, if we do the math? One week after?

18 A. More or less.

19 Q. And you said you have been a border patrol
20 agent for eight years?

21 A. Yes.

22 Q. And part of your training, again, you fill out
23 police reports? Is that part of your training when
24 you're at the academy?

25 A. Yes. Yeah, yeah, filling out reports. A lot

1 of that's done on the FTU, but yes.

2 Q. That includes this G-166C?

3 A. Yes.

4 Q. And I believe you said on direct examination
5 that -- well, before I ask you that question, I
6 think it's safe to say that you include all the
7 important information in this memorandum of
8 investigation. Would that be safe to say?

9 A. Yes.

10 Q. You don't leave out anything that's not
11 important, or that's important, I should say?

12 A. Correct.

13 Q. And during direct examination, you testified
14 that -- maybe I misunderstood you to say that you
15 read the field questions to the two subjects.

16 A. No, no. I asked field interview questions,
17 specifically what country are you a citizen of or
18 what country were you born in.

19 Q. So you were the one that asked them that
20 question?

21 A. Yes.

22 Q. That's obviously very important because you
23 don't want to take an American citizen into
24 custody, obviously; right?

25 A. Correct.

1 Q. Because as we all know, border patrol doesn't
2 have jurisdiction over American citizens; right?

3 A. In what sense? If you have a U.S. citizen
4 smuggling narcotics, we absolutely do.

5 Q. Oh, well, for reentry. I should say reentry,
6 to clarify.

7 A. Again, that's incorrect.

8 Q. Okay.

9 A. If you have a U.S. citizen entering illegally
10 in between ports without inspection, we're still
11 going to take them into custody. They're not going
12 to get charged with illegal entry --

13 Q. Okay.

14 A. -- the way someone from another country would,
15 but we would still take them into custody.

16 Q. But we can agree illegally entering the
17 country is a crime?

18 A. Yes.

19 Q. Would you agree? Right?

20 A. Yeah.

21 Q. Otherwise we wouldn't be here?

22 A. Correct.

23 Q. Okay. So may I approach you with your report?

24 A. Sure.

25 MR. ROCHA: Your Honor?

1 THE COURT: Absolutely.

2 BY MR. ROCHA:

3 Q. Do you have your report in front of you?

4 A. I do.

5 Q. Now, can you tell us where in your report you
6 actually say -- you write that you asked those
7 field questions to the two subjects?

8 A. It appears that I probably did not. I don't
9 have that in the report.

10 Q. Would you agree that that's an important fact?

11 A. In terms of taking them into custody?

12 Yeah, you want to make sure that they were, in
13 fact, an illegal alien. However, if I am going to
14 take them into custody --

15 Q. But that's not in your report, right, that you
16 asked them field questions?

17 A. Correct.

18 Q. Now, at the end of your report, it said that
19 you took the two subjects into custody; correct?

20 A. Correct.

21 Q. And then the incident -- what time was the
22 incident, according to your report?

23 A. I believe we were advised via radio about
24 12:15, and we took them in custody at 12:20.

25 Q. And it was also without incident?

1 A. Yes.

2 MR. ROCHA: Your Honor, I have no other
3 questions.

4 THE COURT: Thank you.

5 Ms. Furtado?

6 MS. FURTADO: Thank you.

7 MR. ROCHA: Your Honor, may I approach --

8 THE COURT: Yes. Thank you very much.

9 Thank you. Thank you, Mr. Rocha.

10 Ms. Furtado?

11 MS. FURTADO: Thank you.

12 REDIRECT EXAMINATION

13 BY MS. FURTADO:

14 Q. Agent Wagner, do you write a report in every
15 -- in every case?

16 A. No.

17 Q. When do you write reports?

18 A. We -- I write a report when it turns out
19 there's a 1326 or a 24 or a case that actually
20 requires a first-person narrative.

21 Q. And when you write reports, were you trained
22 to write down every single detail of what happened?

23 A. Important details.

24 Q. Okay. What's the purpose of your report for
25 you?

1 A. To remind me of what occurred during the
2 event.

3 Q. Okay. Were you able to take a look at your
4 report prior to testifying today?

5 A. I was.

6 Q. Was it able to remind you of the events that
7 happened on May 1st, 2015?

8 A. Yes.

9 Q. And the information that you provided about
10 taking into custody, I'm going to ask you some
11 questions about that, but I want to --

12 A. Sure.

13 Q. -- show you something.

14 MS. FURTADO: Your Honor, may I approach?

15 THE COURT: Yes.

16 BY MS. FURTADO:

17 Q. I'm showing you number two.

18 I'd ask you to take a look at that. Can you
19 locate the sentence that relates to 12:20 a.m.?

20 A. Are you talking about, "Both subjects were
21 taken into custody without incident at
22 approximately 12:20 a.m.?"

23 Q. Yes, that's it.

24 A. Yes.

25 Q. Okay. Did that custody at 12:20 a.m. happen

1 before or after you asked the field questions, the
2 field questions about citizenship and
3 documentation?

4 A. When I was asking the questions, both Agents
5 Letavay and Swickheimer were handcuffing the two
6 subjects.

7 Q. Okay. That line about custody at 12:20 a.m.,
8 is that related to your determination before or
9 after you had the questions about whether or not
10 they were --

11 A. Once they're --

12 MR. ROCHA: Your Honor, I believe --
13 objection. I believe that the witness has already
14 answered the Government's question, which is were
15 the questions asked before custody or after
16 custody. The agent's testimony was that he asked
17 the questions as they were being handcuffed.
18 That's his testimony.

19 THE COURT: You can go ahead and ask the
20 question.

21 BY MS. FURTADO:

22 Q. The line where it says custody happened at
23 12:20 a.m., does that time refer to custody before
24 you asked the questions about citizenship and
25 paperwork, or does it refer to after those

1 questions were asked?

2 MR. ROCHA: Objection again. That's
3 already been asked and answered by the agent, Your
4 Honor.

5 THE COURT: I'm going to let him answer
6 it. Overruled.

7 A. That time for me would refer to when I'm
8 taking him, putting him in the vehicle at the end
9 of the incident, or at the end of the -- of making
10 contact with him.

11 MS. FURTADO: Thank you. I don't have any
12 other questions for this witness. Thank you.

13 THE COURT: Thank you. May this witness
14 be excused?

15 MR. ROCHA: Yes, Your Honor.

16 THE COURT: Okay. Thank you. Thank you
17 very much for your time.

18 Does anyone need a break or anything? If
19 you do, just let me know at any time, anyone. So
20 just let me know. Okay? Thank you.

21 MS. GRANOFF: Thank you.

22 MS. FURTADO: We're ready to move away
23 from the 2015 statement and move to the 2009
24 statements.

25 THE COURT: Okay.

1 MS. FURTADO: Mr. Rocha had let us know
2 that he wanted one of the agent potentially as a
3 defense witness, and we're just asking if he wants
4 to call that agent now, or if we can release them
5 all.

6 MR. ROCHA: We can release the other
7 witness, which is Mr. Swickheimer. I forgot how
8 you say his last name.

9 THE COURT: Right. Okay. Yes, that's
10 Mr. Swickheimer, I think. Okay. So we'll go ahead
11 and release him.

12 MS. GRANOFF: Now, as to Agents Wagner and
13 Letavay, are you done with them?

14 MR. ROCHA: Yes.

15 MS. GRANOFF: Okay. So --

16 THE COURT: So we can let the three of
17 those individuals go.

18 MR. ROCHA: That's fine.

19 THE COURT: Okay. Great. Thank you.

20 MS. FURTADO: That's our out-of-town
21 witnesses.

22 THE COURT: Right. That's great.

23 MS. GRANOFF: Okay. So I'll go ahead and
24 I'll take the time and just release them and just
25 let them know that we're done with them for the

1 day.

2 THE COURT: Yes.

3 MS. GRANOFF: Your Honor, do you want to
4 hear argument right now on this set of statements
5 for the motion to suppress, or do you want to take
6 argument for all of them once we do the testimony?

7 THE COURT: I think I'd like to hear the
8 witnesses, hopefully, so that we can get them done
9 and then --

10 MS. GRANOFF: Okay.

11 THE COURT: Unless that's a real
12 inconvenience for you.

13 MS. GRANOFF: No.

14 THE COURT: Mr. Rocha?

15 MR. ROCHA: I'd rather wait until the end.

16 THE COURT: Yeah, I think it probably
17 makes sense. Okay. Great. Thank you.

18 MS. GRANOFF: All right. Then I'll line
19 up the next set of witnesses up, Judge.

20 THE COURT: Okay. Thank you.

21 JORGE BORREGO, WITNESS, SWORN

22 THE WITNESS: My name is Jorge Borrego.
23 My last name is B-o-r-r-e-g-o.

24 THE COURT: Thank you.

25 Ms. Furtado?

1 MS. FURTADO: Thank you.

2 DIRECT EXAMINATION

3 BY MS. FURTADO:

4 Q. Sir, can you tell us where you work.

5 A. The U.S. Border Patrol.

6 Q. And how long have you worked there?

7 A. Been there just over eight years.

8 Q. Does it take special training to become a
9 border patrol agent?

10 A. Yes.

11 Q. Can you tell us about that special training
12 and what you had to do.

13 A. I went to a -- the academy in Artesia, New
14 Mexico, and there we received training. We learned
15 immigration law, criminal law, firearms, defensive
16 tactics, flying watch duties, patrol -- how to
17 patrol the border.

18 Q. Okay. When you finish basic training, do you
19 have to go to field training?

20 A. Yes.

21 Q. Is there a portion of basic training where you
22 can learn Spanish?

23 A. Yes.

24 Q. Did you have to do that portion?

25 A. No.

1 Q. Is that -- why is that?

2 A. I was able to test out of speaking -- of the
3 Spanish course.

4 Q. Did you grow up speaking Spanish?

5 A. Yes.

6 Q. Okay. Once you finished -- did you
7 successfully complete your basic training?

8 A. Yes.

9 Q. Did you then go to field training?

10 A. Yes.

11 Q. Where did you do your field training?

12 A. I received my field training in my duty
13 station, which is Sonoita, Arizona.

14 Q. And how long did you have to do field
15 training?

16 A. It was approximately 12 weeks.

17 Q. And what types of things did you do while on
18 field training?

19 A. We did -- we interacted with people trying to
20 attempt to enter the country illegally or smuggle
21 contraband. We learned this under supervision of
22 another agent.

23 Q. Do you have to be -- do you have to
24 successfully complete your field training to be let
25 out to be a border patrol agent on your own?

1 A. Yes.

2 Q. Do you have to do post-academy training as
3 well?

4 A. Yes.

5 Q. What is that?

6 A. It's -- we received our training -- it's
7 online, a series of tests and exams, and you have
8 to pass those exams.

9 Q. Were you able to pass those?

10 A. Yes.

11 Q. So were you able to then successfully complete
12 basic field and post-academy training?

13 A. Yes.

14 Q. After that did you receive specialty training?

15 A. Yes.

16 Q. Or specialty assignments?

17 A. Yes.

18 Q. Okay. Can you take us through what specialty
19 assignments you've had.

20 A. I did a detail in Tucson, Arizona, as a
21 processing agent, so I did various processing,
22 notice to appears, ERs, expedited removals,
23 reinstatements of prior order of removals.

24 And I've also done prosecutions, and that was
25 also in Tucson, and there I was -- worked as a case

1 agent.

2 Q. All right. Let's talk about your time process
3 -- in the processing assignment. How did you
4 generally do your processing? I mean, how is it
5 generally laid out, from what you have experienced?

6 A. Somebody -- somebody gets apprehended, and
7 then they get brought back to where they're going
8 to get processed, and most -- in my case I did it
9 both in Sonoita and Tucson.

10 And they get fingerprinted. They'll get a --
11 before they get fingerprinted, they'll get -- it's
12 called a field I-826, and that's where they'll take
13 biographical information from an individual.

14 Q. Who's "they?"

15 A. Agents in the field. And after they get --
16 after they get their biographical information,
17 they're taken to the station and fingerprint --
18 they'll run the fingerprints and take a photograph
19 of the individual.

20 Q. That field 826, is that something that you
21 would get as a processing agent?

22 A. Yes.

23 Q. And what kind of information does it have on
24 it?

25 A. It'll have all the information, biographical

1 information of the individual.

2 Q. Okay. And do you look at that information as
3 a processing agent?

4 A. Yes.

5 Q. Do you look at the form for other information
6 that might be provided on there?

7 A. Yes. If there's -- it'll help you determine
8 what kind of -- what kind of file to do on the
9 individual, how to -- how you're going to proceed
10 with the individual.

11 Q. What kinds of things are you taking into
12 consideration when you're deciding how to process
13 an individual that you're presented with?

14 A. Once they're -- once they're fingerprinted and
15 rolled, we'll take a look at their criminal history
16 and their immigration history, and in addition to
17 that, if somebody states -- has some kind of claim
18 to being admissible to the U.S. also.

19 Q. Those are things that you would take into
20 consideration?

21 A. Yes.

22 Q. Is that what you're saying? Okay.

23 When you're processing, what types of
24 questions are you asking?

25 A. It's -- it's biographical information, and --

1 and if you -- sorry. Repeat the question.

2 Q. Well, maybe I'll ask a better question.

3 You said there's biographical information
4 provided on the field 826.

5 A. Yes.

6 Q. When you process a person, so they come with
7 their 826, what types of questions are you asking
8 that person?

9 A. I'm determining to make sure to see if they're
10 admissible or inadmissible, so I will take a sworn
11 statement if I determine they're inadmissible.

12 Q. Okay. The first steps though, you said, with
13 processing are what? You get the field 826; is
14 that correct?

15 A. Yes.

16 Q. All right. From there, would you run their
17 criminal history?

18 A. After we fingerprint. With the fingerprints
19 and the picture being taken, we'll -- that will get
20 run through our databases, and it'll tell us their
21 -- reveal their criminal or immigration history.

22 Q. Okay. Once you have that information, do --
23 do you use a computer system then to process the
24 person before you?

25 A. Yes.

1 Q. Okay.

2 A. It's called the E3. That's where we input all
3 our information.

4 Q. And what types of steps do you have to go
5 through when you're using the E3?

6 A. I'll bring the individual up to me with their
7 826, and I'll have them standing in front of me,
8 and I'll go through each page with the individual.

9 Q. Each page of?

10 A. An E3, the pages that you go through.

11 Q. The field 826, when they come with that, is
12 there a photo of the person on the field 826?

13 A. No.

14 Q. Okay. Where would the photo -- you said
15 there's a photo taken. Where would the photo of
16 the person be?

17 A. That's something I would do if I'm taking the
18 fingerprints and the photo.

19 Q. And do you always take the fingerprints and
20 the photo when you're processing someone?

21 A. Not always.

22 Q. Is it -- is it information that you get at
23 some point during your processing?

24 A. Yes.

25 Q. Okay. And when you're processing, do you ask

1 again biographical information?

2 A. Yes. I'll verify with the name or the -- and
3 the date of birth to make sure the correct person
4 is standing in front of me.

5 Q. Okay. So help me to understand. Are you
6 asking the person in front of you their date of
7 birth and their name?

8 A. With the 826, just to make sure it's that
9 person.

10 Q. Okay. Do you also look at the photo that's
11 been provided to see if that's the person in front
12 of you as well?

13 A. Yes.

14 Q. Before you begin processing, do you consider
15 the criminal history and the immigration history of
16 the person before you?

17 A. Yes.

18 Q. Okay. Does that information factor into the
19 decisions you make in terms of how you're going to
20 process?

21 A. Yes.

22 Q. Now, what type of biographical information do
23 you ask a person as you're processing them?

24 A. I'll verify the information off the 826, and
25 then if the person has no credible fear or they're

1 -- they have some kind of claim of being
2 inadmissible into the U.S., I'll be asking these
3 questions.

4 Q. Okay. One second.

5 Do you fill out a form when you're doing
6 processing, the I-213 form?

7 A. Yes.

8 MS. FURTADO: Judge, may I approach the
9 witness?

10 THE COURT: Sure.

11 MS. FURTADO: Thank you.

12 BY MS. FURTADO:

13 Q. I'm going to show you this document, and I
14 would ask you to take a look at it and see if you
15 recognize it.

16 A. Vaguely.

17 Q. Okay. Is it an I-213 form?

18 A. Yes.

19 Q. Is that the form you would use when you
20 process a person?

21 A. Yes.

22 Q. Does it include the questions that you would
23 ask a person while processing them?

24 A. Yes.

25 Q. Okay. Are you familiar with this type of

1 form?

2 A. Yes.

3 Q. Okay. Are you familiar with the layout of
4 this form?

5 A. Yes.

6 Q. And is that an accurate reflection of the
7 layout of an I-213 form?

8 A. Yes.

9 Q. So when doing a processing of an alien and
10 you're filling out I-213 form, what are the types
11 of biographical questions that you might ask a
12 person?

13 A. Their -- I'll ask them -- I'll verify their
14 name, date of birth. I'll ask them their address,
15 if they have any children. I will ask them their
16 parent -- verify their parents' name.

17 Q. Are you asking to -- about their parents in
18 terms of where their parents were born or where
19 their parents live?

20 A. Both.

21 Q. Okay. Why do you ask the question about
22 children?

23 A. If they are able to -- if they have a claim, I
24 can do a different kind of file. If it's -- in
25 this case it was an expedited removal, but if it

1 was -- if he had United States children, I would do
2 a different kind of file.

3 Q. Does United -- does having United States
4 children affect your decision on how you process a
5 person?

6 A. Yes.

7 Q. Okay. Are you noting -- when you are filling
8 out the I-213 form, are you noting the responses
9 that a person you're processing is giving you?

10 A. Yes.

11 Q. How are you noting those responses?

12 A. So this individual is standing in front of me,
13 and I'm going -- in the computer there is page-by-
14 page. I'm inputting his information as I'm asking
15 him.

16 Q. Is it a verbatim documentation of what they're
17 saying to you?

18 A. Yes.

19 Q. If a person tells you they're not going to
20 answer a question, what is your process for
21 documenting that response?

22 A. "Failed to respond," something like that.

23 Q. Why are you asking questions about where a
24 person's parents live?

25 A. Because if they can get citizenship from their

1 parents, it would be a different file also.

2 Q. And their responses to where their parents
3 live, is that something you're documenting in the
4 I-213 form?

5 A. I -- I ask them their name and then their
6 nationality, but in the sworn statement I take from
7 them, I'll get more information from them.

8 Q. You're asking their name. Does that mean
9 you're asking the person that you're processing,
10 you ask their parents' name and their parents'
11 nationality?

12 A. Yeah, I'll ask them what their parents' names
13 are.

14 Q. Okay. Does the I-213 form have a photo on it?

15 A. Yes.

16 Q. And is that the photo that you are comparing
17 to the person you are processing?

18 A. Yes.

19 Q. Okay. Do -- does the person you're processing
20 give you sort of height and weight information?

21 A. We take that from them. We have a scale and
22 height measurement.

23 Q. Okay. Does the -- do you ask the person when
24 you're completing the I-213 form during the
25 processing where that person's country of

1 citizenship is?

2 A. Yes.

3 Q. Okay. Do you ask them if they have a United
4 States address?

5 A. Yes.

6 Q. Do you ask them about their entry into the
7 United States, if they are not from the United
8 States?

9 A. Yes.

10 Q. And is that something you document on the 213
11 form?

12 A. Yes. In this instance --

13 Q. Hold on. We'll get there.

14 A. Okay.

15 Q. We'll get there. Okay. All right.

16 How long does it generally take you to do the
17 processing for the I-213 form?

18 A. Typically the 214 (sic) -- I'm not -- I don't
19 -- I'm not sure. Maybe -- maybe 20 minutes. I
20 mean, like, this is an expedited removal. It takes
21 -- I do it from start to finish, so that's
22 typically like an hour. So the 213 is maybe --
23 maybe around 20 minutes, around that time.

24 Q. Okay. During that time are you making
25 observations about the person you're processing?

1 A. Yes.

2 Q. Are you -- are you noting if they have any
3 injuries?

4 A. Yes.

5 Q. Have you ever had somebody tell you they were
6 afraid when you were doing processing?

7 A. Yes.

8 Q. And when they tell you that, what do you do
9 with that information?

10 A. I will notate it in the 213.

11 Q. Does that cause an alternative process to have
12 to happen?

13 A. There is an additional form that gets
14 generated, and it's a credible fear form.

15 Q. So I'm going to ask you, then, about an
16 expedited removal. Do you recall doing an
17 expedited removal on January 9th, 2009?

18 A. With this report, yes.

19 Q. Okay. And did that process refer to a Ramon
20 Ramos-Zepeda?

21 A. Yes.

22 Q. And did you make contact with Mr. Zepeda and
23 were you the -- well, let me -- let me back up.

24 Were you the person that did all the
25 processing for Mr. Zepeda on the 12th of January,

1 2009?

2 A. Yes.

3 Q. Now, when you began the processing with
4 Mr. Zepeda, what information did you have? Were
5 you given any forms?

6 A. The I-826, the -- that's the form that the
7 agent provides when he brings it individually.

8 Q. Is that the field 826, the field processing
9 form?

10 A. Yes, the field 826.

11 Q. Now, on January 9th, 2009, do you recall if
12 you took the picture of Mr. Ramos-Zepeda?

13 A. I do not.

14 Q. Do you recall looking at the photo that you
15 were provided and comparing it to the person in
16 front of you?

17 A. Yes, I do.

18 Q. And did the photo and the person before you,
19 did that match?

20 A. Yes.

21 Q. Okay. Now, when you do this I-213 process,
22 did you follow the same process we've talked about?
23 Did you ask Mr. Zepeda questions, biographical
24 questions?

25 A. Yes.

1 Q. And let's talk about those.

2 A. Okay.

3 Q. What information did he -- did Mr. Zepeda give
4 you in terms of his nationality?

5 A. His nationality was Mexico.

6 Q. Okay. And I see that you're referring to the
7 report, the I-213.

8 A. Yes.

9 Q. Is that helping you to refresh your memory on
10 this event?

11 A. Yes.

12 Q. Okay. Now, did he tell you about a place and
13 time of entering into the United States?

14 A. Yes.

15 Q. And what did he tell you?

16 A. He entered January 12th, approximately -- I
17 take that back. January 9th of 2009, and it was
18 near Naco, Arizona.

19 Q. Okay. About what time on January 9th?

20 A. 0800, eight o'clock in the morning.

21 Q. Okay. So did you do the processing on the
22 12th of January?

23 A. Yes.

24 Q. Okay. And so the information you were
25 provided as the date and time of the defendant's

1 entry was the 9th of January?

2 A. He answered on the 9th and he was apprehended
3 on the 12th.

4 Q. Okay. The information about time and place of
5 entry and -- was that provided by Mr. Ramos-Zepeda
6 to you?

7 A. I double-checked, but it is also on the field
8 826.

9 Q. By "double-check," does that mean you asked
10 Mr. Ramos --

11 A. Yes.

12 Q. -- Zepeda?

13 A. I do.

14 Q. And the information that you're referring to
15 on your report, was that something that you would
16 have obtained from Mr. Ramos-Zepeda himself?

17 A. Yes.

18 Q. Now, did you ask Mr. Ramos-Zepeda about his
19 parents?

20 A. Yes.

21 Q. Did you ask him where -- the nationality of
22 his mother and father?

23 A. Yes.

24 Q. What did he tell you about their nationality?

25 A. They were nationals of Mexico.

1 Q. Okay. Would that response have triggered you
2 to think that there was any form of relief
3 available to Mr. Ramos-Zepeda?

4 A. No.

5 Q. Did you ask Mr. Ramos-Zepeda about children
6 that he might have?

7 A. Yes.

8 Q. And what was his response?

9 A. He claimed none.

10 Q. Okay. If he had claimed United States citizen
11 children, would that have affected your processing
12 of Mr. Ramos-Zepeda?

13 A. Yes.

14 Q. Would -- what would you have done had he had
15 United States or indicated to you that he had
16 United States citizen children?

17 A. I might have -- I might have -- so we take it
18 to the supervisor, and I would have asked him if he
19 was -- if I should do a notice to appear on the
20 individual.

21 Q. Okay. But since there were none claimed, did
22 that mean you didn't take this information to the
23 supervisor?

24 A. I still take it just to make sure that he --
25 the expedited removal was okay.

1 Q. Okay. And were you advised that the expedited
2 removal would be okay?

3 A. Yes.

4 Q. Okay. Now, when you began -- began this
5 process, did you -- had Mr. Ramos-Zepeda's
6 fingerprints been taken?

7 A. Yes.

8 Q. And did you receive results of his -- from his
9 fingerprints being run?

10 A. Yes, yes.

11 Q. And did you receive criminal history with
12 regard to Mr. Ramos-Zepeda?

13 A. Yes.

14 Q. What information did you receive regarding
15 Mr. Ramos-Zepeda's criminal history?

16 A. He -- he had an outstanding warrant, as long
17 -- as well as criminal history.

18 Q. Okay. Where was the outstanding warrant from?

19 A. The outstanding warrant was out of Redwood
20 City.

21 Q. Okay. And what information -- what
22 information did you have regarding his -- the
23 criminal history besides the warrant? Did you have
24 information --

25 A. Yeah.

1 Q. -- related to a conviction?

2 A. Excuse me?

3 Q. Did you have information related to a
4 conviction?

5 A. Yes.

6 Q. Okay. And did the warrant arise from the
7 conviction?

8 A. Yes.

9 Q. And when was the conviction?

10 A. The conviction, May 23rd of 2006.

11 Q. When you're making a determination in terms of
12 immigration processing, do you consider criminal
13 history?

14 A. Yes.

15 Q. In this particular case, would
16 Mr. Ramos-Zepeda's criminal conviction make him
17 eligible for a voluntary return?

18 A. No.

19 Q. Would the outstanding warrant that
20 Mr. Ramos-Zepeda had, would that make him eligible
21 for a voluntary return?

22 A. No.

23 Q. Did you receive Mr. Ramos-Zepeda's criminal
24 history?

25 A. Yes.

1 Q. And what did -- I'm sorry. I said -- I meant
2 immigration history. Did you receive Mr. Ramos-
3 Zepeda's immigration history?

4 A. Yes.

5 Q. And what information did you have regarding
6 his immigration history?

7 A. There was none found.

8 Q. Okay. How did -- so he had no immigration
9 history. Was he eligible for criminal charges?

10 A. No.

11 Q. Why not?

12 A. Because he had no immigration history.

13 Q. Okay. What were you considering -- you said
14 from the beginning you did an expedited removal.
15 Why did you consider an expedited removal for
16 Mr. Ramos-Zepeda?

17 A. Because of his criminal history, he was
18 eligible for expedited removal.

19 Q. Okay. Let's talk about that eligibility
20 requirement. Okay?

21 A. Okay.

22 Q. How does a person become eligible for
23 expedited removal, according -- according to your
24 process?

25 A. He was apprehended within 14 days of entering

1 the border and within 100 miles. In addition, he
2 was -- he entered illegally.

3 Q. By "illegally," what are you --

4 A. He wasn't -- he didn't go through a port of
5 entry. He wasn't inspected.

6 Q. And during your processing of him, did
7 Mr. Ramos-Zepeda have any entry documents with him
8 or on him?

9 A. Did he have any?

10 Q. Yes.

11 A. No.

12 Q. Okay. So in terms of expedited removal, do
13 you have to be found within a hundred air miles of
14 the border?

15 A. Yes.

16 Q. And when the agents made contact with him, did
17 you have information about how the contact was made
18 with Mr. Ramos-Zepeda?

19 A. On the 826, yes.

20 Q. Okay. And what information did you have as to
21 how agents made contact with Ramos-Zepeda on the
22 12th?

23 A. Do you have the 826 available?

24 Q. I would ask you to just look at page 4, Bates
25 stamp 54, first paragraph.

1 A. Agents were performing their border patrol
2 duties east of Sonoita. They were -- it was via
3 horse patrol and ATV units.

4 Q. Okay. So was Mr. Ramos-Zepeda physically in
5 the United States when agents made contact with
6 him?

7 A. Yes.

8 Q. And what -- and did you say that the date of
9 entry was the 9th of January?

10 A. Yes.

11 Q. And was that the date that Mr. Ramos-Zepeda
12 said he originally came into the United States?

13 A. Yes.

14 Q. And was that within 14 days of the encounter
15 with immigration officials for him to qualify for
16 an expedited removal?

17 A. Yes.

18 Q. Okay. Now, when you're doing an expedited
19 removal, do you have to follow a certain process?

20 A. Yes.

21 Q. Does that mean you have to take a sworn
22 statement from the individual?

23 A. Yes.

24 Q. And would you have to provide them notice of
25 their potential inadmissibility?

1 A. Yes.

2 Q. Would you also have to provide them -- provide
3 them information about the potential charges they
4 face?

5 A. Yes.

6 MR. ROCHA: Your Honor, I'm not opposed to
7 foundation, but I've allowed the Government to --
8 the last four questions, she's just been leading
9 the witness, and he's just been saying, "Yes," so
10 I'd ask for her to rephrase the question.

11 THE COURT: They are leading questions, so
12 I'm going to sustain that.

13 BY MS. FURTADO:

14 Q. So let's talk about the process, then, for
15 doing your immigration -- your expedited removal.

16 First, is an expedited removal a criminal
17 proceeding?

18 A. No.

19 Q. What is it?

20 A. It's administrative.

21 Q. Okay. In an administrative proceeding, do you
22 read the person you're processing a Miranda
23 warning?

24 A. No.

25 Q. Do you read a warning to the person you're

1 processing if you're processing them
2 administratively?

3 A. Yeah, there's a -- there's s -- before I take
4 their sworn statement there's a little statement.
5 I have them read it, and if they can't read, I will
6 read it to them.

7 Q. And if you -- if -- what language are you
8 using when you're reading the statement to a
9 person?

10 A. Spanish.

11 Q. And that would --

12 A. Typically.

13 Q. Would that be just dependent on what language
14 they spoke?

15 A. Yes.

16 Q. Okay. When you were speaking to
17 Mr. Ramos-Zepeda, what language were you using?

18 A. I believe it was Spanish.

19 Q. I would ask you to look at -- well, I'm going
20 to show you the document.

21 MS. FURTADO: May I approach the witness,
22 Your Honor?

23 THE COURT: Sure.

24 MS. FURTADO: Thank you.

25 BY MS. FURTADO:

1 Q. I'm going to show you what's been marked as
2 Government's Exhibit No. 1. I'd ask you to take a
3 look at that (inaudible).

4 A. Okay.

5 Q. So do you recognize those documents?

6 A. Yes.

7 Q. Okay. What are they?

8 A. This is a record of the sworn statement and
9 proceedings under Section 235(b)(1) of the Act.

10 Q. Okay. What -- is there an indication of who
11 the alien was that you created that record for?

12 A. Yes. His name is on here.

13 Q. Okay. Who is it?

14 A. Ramon Ramos-Zepeda.

15 Q. Is that the record that you created when you
16 did the processing on the 12th of January, 2009?

17 A. Yes.

18 Q. Okay. Is that a fair and accurate reflection
19 of the -- of the conversation you had or the -- the
20 conversation you had --

21 A. Yes.

22 Q. -- with Mr. Zepeda on that day?

23 MS. FURTADO: Judge, I move to admit
24 Exhibit No. 1.

25 THE COURT: Mr. Rocha, any objection?

1 MR. ROCHA: No objection.

2 THE COURT: We will go ahead and admit
3 Government's Exhibit No. 1. Thank you.

4 BY MS. FURTADO:

5 Q. Okay. When looking at that document, Agent,
6 can you see if there's a language indicated?

7 A. Yes. It says Spanish language.

8 Q. In looking at that document, does that help to
9 refresh your memory about the language you used
10 when speaking to Mr. Ramos-Zepeda?

11 A. Yes. I spoke to him in Spanish.

12 Q. And when you were speaking to
13 Mr. Ramos-Zepeda, did he appear to be able to
14 understand you?

15 A. Yes.

16 Q. And were you able to understand him in
17 Spanish?

18 A. Yes.

19 Q. And at times during your conversation with
20 Mr. Ramos-Zepeda, did he ask you questions that
21 were consistent with what you were talking about?

22 A. I'm sorry?

23 Q. Did he ask you questions about what you were
24 doing, the processing?

25 A. Typically people ask and I'll answer them,

1 whatever questions they have.

2 MR. ROCHA: I object. Nonresponsive. She
3 asked whether he asked questions, not whether
4 generally people -- his response was generally
5 people do.

6 THE COURT: I'm going to sustain that. I
7 think -- go ahead and if you'd ask the prior
8 question with regard to specifically this
9 individual.

10 MS. FURTADO: Okay.

11 BY MS. FURTADO:

12 Q. When you were speaking with Mr. Ramos-Zepeda,
13 were you -- were you having an exchange where, when
14 he asked you questions, it was appropriate to what
15 you were talking about?

16 A. Yes.

17 Q. Okay. You said you use a system called E3 to
18 do the processing?

19 A. Yes.

20 Q. Is that the same system you use when doing an
21 expedited removal?

22 A. Yes.

23 Q. And does that system, would it automatically
24 generate forms for you to do the expedited removal?

25 A. Yes.

1 Q. Okay. We've talked a little about the
2 biographical information. That's information you
3 have to put in. Is that information you have to
4 put in when doing the expedited removal?

5 A. Yes.

6 Q. And did you put that information in when doing
7 this expedited removal for Mr. Ramos-Zepeda?

8 A. All the questions that I asked him are
9 documented in this record of sworn statement.

10 MS. FURTADO: Can I have just a second,
11 Your Honor?

12 THE COURT: Sure.

13 BY MS. FURTADO:

14 Q. Agent, I want to back up a second. In the 213
15 there's a photograph.

16 A. Okay.

17 Q. And I previously asked you if you verified
18 during processing the photo versus the person
19 you're processing?

20 A. Yes.

21 Q. In this particular instance, did you -- did
22 you verify, when you were processing
23 Mr. Ramos-Zepeda, that the photo you had on the
24 I-213 was the person you were actually processing?

25 A. Yes.

1 Q. And do you see that person in the courtroom
2 today?

3 A. The appearance is a little different, but they
4 look the same.

5 Q. Okay. And can you just point to him and give
6 us an article of clothing that he's wearing, the
7 person that you're referring to that you say
8 appears to look the same in the picture?

9 A. He's wearing an orange shirt.

10 MS. FURTADO: Okay. Your Honor, I would
11 ask that the record reflect that the witness is
12 referring to the defendant.

13 THE COURT: It will reflect that. Thank
14 you.

15 MS. FURTADO: Thank you.

16 BY MS. FURTADO:

17 Q. When you talked to Mr. Ramos-Zepeda, you said
18 that you took some personal information. Would you
19 ask Mr. Ramos-Zepeda if he had a United States
20 address?

21 A. Yes.

22 Q. And in this particular instance, on the 12th,
23 when you talked to Mr. Ramos-Zepeda, did he give
24 you a U.S. address?

25 A. No.

1 Q. What information did he give you?

2 A. He failed to provide a U.S. address.

3 Q. When you process a person for immigration
4 issues, do you also let them speak to a consular
5 representative?

6 MR. ROCHA: Again, Your Honor, it's a
7 leading question.

8 THE COURT: Well, I think that's a yes or
9 no, but you are leading him a little bit, so I'll
10 sustain that.

11 MS. FURTADO: Okay.

12 BY MS. FURTADO:

13 Q. Is there a process by which a person is able
14 to talk to a consular representative during
15 immigration processing?

16 A. They do have a right to speak to the consulate
17 and --

18 Q. And in this particular instance with
19 Mr. Ramos-Zepeda, did you give him that
20 opportunity?

21 A. Yes, and --

22 Q. Did he take that opportunity to speak to a
23 consular representative?

24 A. At that time he declined to speak with anyone.

25 Q. Okay. When you are offering that opportunity,

1 are you also evaluating or asking questions about
2 whether or not a person is afraid?

3 MR. ROCHA: Again, objection. Counsel
4 should re-ask their question like what else do you
5 do, what happens afterwards, but she's leading him
6 exactly to the answer. He's going to say, yes, I
7 did.

8 THE COURT: Sustained.

9 BY MS. FURTADO:

10 Q. What questions do you ask after talking to a
11 consular -- after you let an alien talk to a
12 consular representative?

13 A. If they don't want to talk, I don't have them
14 -- we just don't -- they don't talk to the
15 consulate.

16 Q. Okay. What other -- what other questions are
17 you asking?

18 A. I ask them if they fear any kind of
19 persecution or torture if they're returned to their
20 country of citizenship.

21 Q. And in this particular instance, did you ask
22 Mr. Ramos-Zepeda about fear or torture?

23 A. I did.

24 Q. And what was his response?

25 A. He did not fear any persecution or torture.

1 Q. Okay. So based on the information you have
2 from Mr. Ramos-Zepeda through the I-213 process,
3 did you believe that you had any form of relief
4 that you should be extending to the defendant?

5 A. No.

6 Q. Okay. And did you believe that
7 Mr. Ramos-Zepeda fit the criteria for expedited
8 removal?

9 A. Yes, he did.

10 Q. All right. Now, when you do an expedited
11 removal, I've shown you Exhibit 1. That Exhibit
12 does -- is there a provision on there where you are
13 providing some sort of right?

14 A. I read them this little synopsis.

15 Q. Okay. And what is that synopsis?

16 A. It starts with, "I am an officer of the United
17 States Department of Homeland Security. I am
18 authorized to administer the immigration laws and
19 to take sworn statements. I want to take your
20 sworn statement regarding your application for
21 admission to the U.S. Before I take your
22 statement, I also want to explain your rights and
23 the purpose and consequences of this interview."

24 I do -- there is -- in the computer, there is
25 two boxes to click whether English or Spanish.

1 Right here it's in English, but I would have read
2 it to him in Spanish. If -- I ask them first if
3 they're able to read and understand it, and if they
4 read and understand it, I'll start my questioning
5 once they're done.

6 Q. And with Mr. Ramos-Zepeda, did you provide
7 what you have just read to us to Mr. Ramos-Zepeda?

8 A. Yes.

9 Q. Did you do that in English or in Spanish?

10 A. In Spanish.

11 Q. Okay. Did you -- while you were observing
12 Mr. Ramos-Zepeda, did he -- did you believe he
13 understood the information you were giving him?

14 A. I asked him.

15 Q. And what -- you asked him what?

16 A. If he understood what I said to him.

17 Q. And what did he say?

18 A. Yes.

19 Q. Do -- what else did you ask him?

20 A. There's a bunch of questions on here. Did you
21 want me to go through each one?

22 Q. Sure.

23 A. I asked him -- so I am asking the questions in
24 Spanish, and while I'm asking him, I'm inputting
25 them into the computer in English, and I asked him,

1 "Do you understand what I've said to you?"

2 And he stated, "Yes."

3 Then I asked him, "Do you have any questions?"

4 He said, "No."

5 Q. Now, let me stop you there.

6 Are you -- when you are giving this right, are
7 you giving any information about admissibility or
8 inadmissibility to the person you're processing?

9 A. I do. I let them know that it's a removal, an
10 expedited removal.

11 Q. Is that part of the sworn statement or the
12 record of the sworn statement?

13 A. Yes. It's in the blurb that -- that is read
14 to them.

15 Q. And in English, can you read us at least a
16 portion of that blurb.

17 A. "You do not appear to be admissible or to have
18 had the required legal papers authorizing your
19 admission to the United States. This may result in
20 your being denied admission and immediately
21 returned to your home country without a hearing.
22 If a decision is made to refuse your admission into
23 the United States, you may be immediately removed
24 from this country, and if so, you may be barred
25 from reentry for a period of five years or longer."

1 Q. When you were speaking to Mr. Ramos-Zepeda,
2 did he appear to understand that portion of this
3 I-67 -- 867 form?

4 A. Yes.

5 Q. As part of the process, do you also ask a
6 person whether they are willing to speak to you or
7 not?

8 A. Yes.

9 Q. Okay. Is that also a portion of this form?

10 A. Yes.

11 Q. Okay. Can you read to us the portion of the
12 form that applies.

13 A. "This may be your only opportunity to present
14 information to me and the Department of Homeland
15 Security to make a decision. It is very important
16 that you tell me the truth. If you lie or give
17 misinformation, you may be subject to criminal or
18 civil penalties or barred from receiving
19 immigration benefits or relief now or in the
20 future."

21 Q. Now, during your contact with
22 Mr. Ramos-Zepeda, did he appear to you to
23 understand that section of the I-867 form?

24 A. Yes.

25 Q. Now, do you -- did you ask Mr. Ramos-Zepeda if

1 he was willing to answer questions, specifically
2 that question?

3 A. Excuse me?

4 Q. Did you ask Mr. Ramos-Zepeda if he was willing
5 to answer your questions?

6 A. Yes.

7 Q. And what did he say?

8 A. Yes.

9 Q. Now, do you then at this point speak to
10 Mr. Ramos-Zepeda about his immigration status and
11 his biographical information?

12 A. I do read him the rest -- the whole statement.

13 Q. Okay.

14 A. So the rest of the statement, it says, "Except
15 as I will explain to you, you are entitled to a
16 hearing or review. U.S. law provides protection to
17 certain persons who face persecution, harm, or
18 torture upon return to their home country. If you
19 fear or have a concern about being removed from the
20 United States" --

21 THE COURT: Slow down. Slow down a little
22 bit. Thank you.

23 A. -- "removed from the United States or about
24 being sent home, you should tell me during this
25 interview because you may not have another chance.

1 "You will have the opportunity to speak
2 privately and confidentially to another officer
3 about your fear or concern. That officer will
4 determine if you should remain in the United States
5 and not be removed because of that fear.

6 "Until a decision is reached in your case, you
7 will remain in the custody of the Department of
8 Homeland Security. Any statement you make may be
9 used against you in this or any subsequent
10 administrative proceeding."

11 Q. Now, after reading that to Mr. Ramos-Zepeda,
12 did he appear to you to understand what you read to
13 him?

14 A. Yes, I asked him.

15 Q. Okay. Can you take us through that, please.

16 A. Excuse me?

17 Q. What did you ask him?

18 A. So I asked him, "Do you understand what I have
19 said to you?"

20 And he stated, "Yes."

21 And then I asked him, "Do you have any
22 questions?"

23 And he stated, "No."

24 And I asked him, "Are you willing to answer my
25 questions at this time?"

1 And he stated, "Yes."

2 MR. ROCHA: Your Honor, it's not
3 necessary. It's already been admitted into
4 evidence, I believe, so the Court can look at that
5 himself. I just don't think it's necessary for him
6 to go through the list of questions he asked.

7 THE COURT: Well, I think if Ms. Furtado
8 wants to she can. It is in evidence.

9 BY MS. FURTADO:

10 Q. One of the things in this form was about
11 biographical information, so let me ask you about
12 that.

13 When you talked to the defendant in this sworn
14 statement, did he tell you what country he was a
15 citizen of?

16 A. Yes. He stated Mexico.

17 Q. Did he tell you if he had parents in the
18 United States that were U.S. citizens?

19 A. He stated his parents were both from Mexico.

20 Q. Did he -- did you ask him if he had any claim
21 to being a U.S. citizen?

22 A. Yes, and he stated, "No."

23 Q. Did you ask him what his purpose for entering
24 the United States was?

25 A. Yes, and he stated he was heading toward

1 Redwood City, California, to find work.

2 Q. Did you ask him about his previous immigration
3 history?

4 A. I asked him if he had been deported before and
5 he stated, "No."

6 Q. Was that consistent with the immigration
7 history information you had?

8 A. Yes.

9 Q. Based on Mr. Ramos-Zepeda's fingerprints?

10 A. Yes.

11 Q. Did you speak to Mr. Ramos-Zepeda about the
12 five-year period, prohibition period?

13 A. I asked him, "Do you understand that, if you
14 are removed from the United States today, you may
15 not ask to enter the United States for a period of
16 five years without the permission of the United" --
17 "the permission of the Attorney General of the
18 United States?"

19 And he stated, "Yes."

20 Q. Now, did you give Mr. Ramos-Zepeda an
21 opportunity to ask you questions during the sworn
22 statement?

23 A. I did. I asked him if there was anything he
24 would like to say or add or for me to add, and he
25 stated, "No."

1 Q. As part of the process of the sworn statement,
2 are you required to ask questions about fear or
3 harm?

4 A. Yes. It's on that fourth -- the fourth page.

5 Q. And what kinds of questions are you asking?

6 A. I asked him if he has any fear or concern
7 about being returned to his home country or being
8 removed from the United States.

9 Q. And what did he say?

10 A. He stated, "No."

11 I asked him, "Would you be harmed if you were
12 returned to your home country or country of last
13 residence?"

14 And he stated, "No."

15 Q. And then do you give him an opportunity to ask
16 you questions or add something else to that
17 statement?

18 A. I do. I asked him, "Do you have any question
19 or anything else you would like to add?"

20 And he stated, "No."

21 Q. What are you required to do once you've
22 completed the sworn statement with an alien that
23 you've processed?

24 A. I print the sworn statement, and each time I
25 make a correction, I have -- I explain to them they

1 have to initial where we alter the page.

2 Q. Okay. And in terms of Exhibit 1, I would ask
3 you to look at what has been Bates-stamped page 77,
4 and we see some markings on that page. Can you
5 tell us what those are.

6 A. So from the top, those are his initials
7 showing that we altered the page. The second one
8 is the same, his initials showing we made markings
9 on the page, and then his signature is next to his
10 name.

11 I also signed next to my name, and there was
12 also an agent who witnessed the signing.

13 Q. Why do you -- did you -- did you -- as part of
14 this process, did you ask the defendant to sign
15 this page that's marked -- that's Bates-stamped 77?

16 A. Yes.

17 Q. And why would you ask him to sign that page?

18 A. I explain to them, these are the questions
19 that I have asked them regarding the removal and to
20 put his signature next to his name.

21 Q. Okay. And is this something you're explaining
22 to him in English or Spanish?

23 A. In Spanish.

24 Q. Now, I'd ask you to just look at that
25 paragraph there. What is that paragraph right

1 above his signature referring to?

2 A. That he has read or have had read to me this
3 statement consisting of four pages, including this
4 page. "I state that my answers are true and
5 correct to the best of my knowledge and that this
6 statement is a full, true, and correct record of my
7 interrogation on the date indicated by the above-
8 named officer of the Department of Homeland
9 Security.

10 "I have initialed each page of this statement
11 and the corrections noted on pages 1, 2, 3 and 4."

12 Q. Okay. Now, is this something that you would
13 have read to Mr. Ramos-Zepeda on the 12th of
14 January, 2009?

15 A. Yes.

16 Q. And did he -- did you believe he understood
17 what you were explaining to him or reading to him?

18 A. Yes, I make sure they understand.

19 Q. Now, the total affidavit that you created for
20 Mr. Ramos-Zepeda on the 12th, is that four pages
21 long?

22 A. Yes.

23 Q. And what markings do we see on the bottom of
24 the pages Bates-stamped 75, 76, -- 75 and 76 and
25 74? Excuse me.

1 A. Those are -- those are his initials. When I
2 -- when I am making the correction, they're
3 standing in front of me, and I'm telling them I'm
4 making this correction and to initial it.

5 Q. What does that initial signify to you?

6 A. That he understood what I'm telling him.

7 Q. And the signature that's on page 77, what did
8 that signify to you, Mr. Ramos-Zepeda's signature?

9 A. That he understood the whole -- the whole
10 statement.

11 Q. Now, in terms of fear, is fear something
12 significant for you? If somebody expresses fear,
13 is that significant for you in your work?

14 A. Yes, because they will see somebody in
15 addition to me that will interview him for -- for
16 their credible fear.

17 Q. Throughout the course of your interaction with
18 Mr. Zepeda, did you notice or observe anything that
19 indicated to you that he was afraid?

20 A. No.

21 Q. Did you note anything in the documents that
22 indicated that Mr. Zepeda was afraid?

23 A. Yes, I did, that he was not afraid.

24 Q. Thank you.

25 Now, once you've had Mr. Ramos-Zepeda initial

1 and acknowledge the signatures, what's the next
2 step in the process that you need to do for the
3 expedited removal?

4 A. We serve him with the I-860.

5 MS. FURTADO: May I approach the witness
6 again, Your Honor?

7 THE COURT: Sure.

8 BY MS. FURTADO:

9 Q. I'm showing you what's been marked as
10 Government's Exhibits 2, 3, and 4, and I'd ask you
11 to take a look at that, those.

12 Do you recognize those documents?

13 A. Yes.

14 Q. Okay. So let's start with No. 2. What is it?

15 A. That's the I-860, the notice and order of
16 expedited removal.

17 Q. Okay. And who is the person that that refers
18 to, that document refers to?

19 A. Ramon Ramos-Zepeda. The charges -- the
20 charges of the Government are on here.

21 Q. And what's the date associated with that
22 document?

23 A. January 12th, 2009.

24 Q. Okay. Is that a fair and accurate copy of the
25 document you would have completed with

1 Mr. Ramos-Zepeda during the processing you did?

2 A. Yes.

3 Q. Okay.

4 MS. FURTADO: Move to admit Government 2,
5 Your Honor.

6 THE COURT: Any objection?

7 MR. ROCHA: No objection.

8 THE COURT: It will be admitted. Thank
9 you.

10 BY MS. FURTADO:

11 Q. I'd ask you to take a look at Exhibit 3.

12 Do you recognize that document?

13 A. Yes.

14 Q. What is it?

15 A. The I-296. This is notice to alien ordered
16 removed/departure verification.

17 Q. Okay. Now, in terms of this document, who is
18 it referring to?

19 A. Ramon Ramos-Zepeda.

20 Q. Okay. What's the date?

21 A. January 12th, 2009.

22 Q. Okay. Is your signature on this document?

23 A. Yes.

24 Q. Okay. Is this a fair and accurate copy of the
25 document you would have completed on the 12th with

1 Mr. Ramos-Zepeda?

2 A. Yes.

3 MS. FURTADO: Okay. I move to admit
4 Government's 3.

5 THE COURT: Mr. Rocha, any objection?

6 MR. ROCHA: No objection, Your Honor.

7 THE COURT: We'll go ahead and admit
8 Exhibit No. 3. Thank you.

9 MS. FURTADO: Okay.

10 BY MS. FURTADO:

11 Q. I'm going to take back No. 4 from you.

12 All right. Now, Mr. -- Agent, when you speak
13 to the -- when you were speaking to
14 Mr. Ramos-Zepeda regarding Exhibit No. 2 and 3,
15 what language were you using?

16 A. Spanish.

17 Q. Okay. And when you were speaking to him, did
18 you have any indication that he was not
19 understanding you?

20 A. No.

21 Q. Okay. Let's talk about Exhibit No. 2.

22 What's the purpose of this form, sir?

23 A. This is to notify him of the charges.

24 Q. And in this particular instance, what were the
25 charges against Mr. Ramos-Zepeda?

1 A. "You did not then possess or present a valid
2 immigration visa, reentry permit, border crossing
3 identification card, or other valid entry document,
4 to wit: You have entered into the United States
5 illegally with the intent to reside in the United
6 States."

7 Q. Now, were these charges based on your
8 investigation or the information that you had?

9 A. In the sworn statement.

10 Q. Okay. And then what's -- is there a different
11 bottom section to the I-860 form?

12 A. Yes.

13 Q. And what is that section?

14 A. A certificate of service. It says, "I
15 personally served this original" -- "served the
16 original of this notice upon the above-named person
17 on January 12, 2009."

18 Q. And what does that section signify to you,
19 sir?

20 A. That I explained these charges to the
21 individual.

22 Q. Which individual?

23 A. Ramon Ramos-Zepeda.

24 Q. Okay. And when you did that, when you served
25 this notice on Mr. Ramos-Zepeda, do you recall

1 having a belief that he wasn't understanding what
2 you were serving on him?

3 A. He understood.

4 Q. Okay. Is there also a section above the
5 certificate of service?

6 A. Yes.

7 Q. What is that section?

8 A. This is the order of removal under Section
9 235(b)(1) of the Act.

10 Q. And what does this section signify?

11 A. "Based upon the determination set forth above
12 and evidence presented during inspection or
13 examination, pursuant to Section 235 of the Act and
14 by the authority contained in Section 235(b)(1) of
15 the Act, you are found to be inadmissible as
16 charged and ordered removed from the United
17 States."

18 Q. Okay. Is that a portion that you would have
19 explained to Mr. Ramos-Zepeda?

20 A. Yes.

21 Q. Okay. There are a few signatures there. What
22 do those signify?

23 A. I signed and so did the supervisor at that
24 time.

25 Q. The supervisor's signature, what is -- what's

1 that for? Why do you need that?

2 A. Because he's the designated official to
3 approve the document.

4 Q. Did you say "to approve the document"?

5 A. Yes.

6 Q. And what does his signature then signify to
7 you?

8 A. That the notice was served.

9 Q. Okay. On the 12th of January, you had
10 information that there was an outstanding warrant.
11 You testified that there was an outstanding
12 warrant.

13 What did you do with that information?

14 A. We -- we contact the agency that has the
15 outstanding warrant and see if they want to seek
16 extradition.

17 Q. Okay. Prior to you -- and so in
18 Mr. Ramos-Zepeda's instance, did they -- did they
19 indicate they wanted to seek extradition?

20 A. They did.

21 Q. Okay. Prior to going forward with the
22 extradition process, do you also talk to
23 Mr. Ramos-Zepeda about Exhibit 3?

24 A. Yes.

25 Q. And what is that document?

1 A. This is a notice to the alien ordered
2 removed/departure verification.

3 Q. Okay. The top section of that form, what is
4 that? What is that about?

5 A. It's notifying Ramon Ramos-Zepeda that he was
6 -- he's been found to be inadmissible to the United
7 States under the provisions of Section 212(a) of
8 the Immigration and Nationality Act or deportable
9 under the provisions of Section 237 of the Act as a
10 visa waiver pilot program violator.

11 "In accordance with the provisions of Section
12 212(a)(9) of the Act, you are prohibited from
13 entering, attempting to enter, or being in the
14 United States for a period of five years from the
15 date of your departure from the United States as a
16 consequence of your having been found inadmissible
17 as an arriving alien in proceedings under Section
18 235(b)(1) or 240 of the Act."

19 Q. Is this something that you would have
20 explained to Mr. Ramos-Zepeda?

21 A. Yes.

22 Q. What language would you have been speaking?

23 A. It would have been Spanish.

24 Q. And at the time, do you recall having any
25 indication that Mr. Ramos-Zepeda did not understand

1 what you were explaining to him from this form?

2 A. No.

3 Q. Now, the bottom portion of that form, what is
4 it?

5 A. The verification of removal.

6 Q. Is that something you complete?

7 A. No.

8 Q. When does that section get completed?

9 A. When they physically get removed from the
10 United States.

11 Q. What happens when a person is physically
12 removed from the United States? Is there some
13 acknowledgment that needs to happen?

14 A. Yeah, all this -- everything here gets filled
15 out, and somebody actually takes them to the -- to
16 a port of entry and physically watches them leave
17 the country.

18 Q. Okay. But as a processing agent, would this
19 be your responsibility, this verification of
20 removal section?

21 A. No.

22 Q. Once you're done -- once you were done
23 processing Mr. Ramos-Zepeda, what did you do?

24 A. I put the file together and put Mr. Ramon
25 Ramos-Zepeda in his cell and waited for the agency

1 that was seeking extradition to take custody of
2 Mr. Ramon Ramos-Zepeda.

3 Q. So does the extraditing agency come or is
4 there --

5 A. There's a -- so he was -- the extradition was
6 out of California, but we have a local Santa Cruz
7 County that will come and pick him up.

8 Q. In this particular case, what happened with
9 Santa Cruz County as far as your involvement was
10 concerned?

11 A. They picked him up.

12 Q. What did you do with the file once -- once
13 Mr. Ramos-Zepeda was picked up?

14 A. It gets sent to the file control office.

15 Q. Do you -- do you talk to Mr. Ramos-Zepeda
16 regarding ties or equity in the country?

17 A. Yes. I -- it's not in the sworn statement but
18 I will ask.

19 Q. Okay. What in this particular instance on the
20 12th did you ask Mr. Ramos-Zepeda regarding equity
21 in the United States?

22 A. I don't remember.

23 Q. Okay. I'd ask you to look at your I-213, and
24 I'd ask you to look at the last page.

25 A. "Ramos claims to have no close family ties or

1 equity in the United States."

2 Q. Okay. Did your I-213 help you to remember
3 that?

4 A. Yes, it did.

5 Q. And was there anything else that was provided
6 to Mr. Ramos-Zepeda during this -- during your
7 processing?

8 A. He was given a meal and a drink. He claimed
9 no fear of returning to Mexico.

10 Q. Were you making observations about his general
11 appearance?

12 A. He appeared to be in good health.

13 Q. Do you know -- in the end, do you know what
14 happened with the extradition of Mr. Ramos-Zepeda
15 at the time?

16 So around the time of these events, the 12th,
17 did you know what happened with the extradition?

18 A. No.

19 MS. FURTADO: Okay. I just need a second,
20 Your Honor.

21 THE COURT: Sure.

22 MS. FURTADO: So -- a couple more
23 questions.

24 BY MS. FURTADO:

25 Q. This incident, the original contact with

1 Mr. Ramos-Zepeda, you said that you had run his
2 criminal history?

3 A. Yes.

4 Q. Do you know what the conviction, the 2005
5 conviction, was for?

6 A. Yeah. It was counts of lewd, lascivious acts
7 with a child under 14.

8 MS. FURTADO: Can I have just one minute,
9 Your Honor?

10 THE COURT: Sure.

11 MS. FURTADO: Okay. I don't have any
12 other questions for this witness.

13 THE COURT: Thank you.

14 Mr. Rocha?

15 MR. ROCHA: Your Honor, can we take a
16 short break?

17 THE COURT: Absolutely. We'll take a
18 break. Thank you. And once again, if at any time
19 you need that, let me know. So we'll take a five-
20 minute break or so.

21 MS. FURTADO: Thank you very much. Thank
22 you.

23 THE COURT: Thank you.

24 (Off the record from 4:11 p.m. to
25 4:22 p.m.)

1 THE COURT: And before we move on, just
2 for housekeeping, I don't think we're going to
3 finish today, and I don't want you to rush. I
4 don't want you to feel like you're rushed, so I was
5 hoping we could come back on Monday. It's my
6 understanding that you're not available on Monday.

7 Unfortunately, I'm on duty the next two
8 weeks, and it looks like the next time that we can
9 return when I'm not on duty is March 7th at nine
10 o'clock a.m.

11 I know you have a March 8th trial date and
12 a plea deadline of today, so those will probably
13 have to -- someone will have to move to continue
14 those.

15 So let me hear from you, Mr. Rocha, first.

16 MR. ROCHA: Well, I can certainly move to
17 continue the trial and the plea deadline. That's
18 not a problem. I can file a formal motion if the
19 Court would like, so that's not a problem.

20 THE COURT: Right, you'll have to do that.

21 MR. ROCHA: Yeah, I can do that. So I
22 certainly will be able to --

23 THE COURT: And I apologize --

24 MR. ROCHA: Oh, no worries, Your Honor.

25 THE COURT: So it looks like -- and so

1 Monday, I wish we could do it Monday. I understand
2 you can't. So -- and I don't want any of you to
3 feel rushed, so I think what we'll do is hopefully
4 we can get through Agent Borrego, and if not, then
5 we'll probably end up having to reconvene on March
6 7th.

7 MR. ROCHA: Your Honor, if it's okay with
8 the Court, we could recess now, because I doubt
9 that my -- I hate for my testimony or cross to be
10 broken.

11 THE COURT: I --

12 MR. ROCHA: And we're going to come back
13 in two weeks, and I hate to then rehash everything
14 just to get us up to speed. So if the Court is
15 inclined, I -- and then the marshals tell me that
16 my client's the last one on the bus --

17 THE COURT: Right, and that actually will
18 probably help everybody, frankly, so that's okay
19 with me.

20 Ms. Furtado, is that okay with you?

21 MS. FURTADO: Yes, Your Honor.

22 THE COURT: Okay. That's fine then. So I
23 think what we're going to do, I'm presuming the
24 agent is going to be available on March 7th. I
25 mean --

1 MS. FURTADO: I didn't ask.

2 THE COURT: Well, why don't we ask.

3 MS. FURTADO: I thought that we would
4 continue going through Borrego, but -- are you
5 available?

6 AGENT BORREGO: Is that, March 7th, a
7 Monday, you said?

8 MS. FURTADO: It's a Monday.

9 THE CLERK: It's a Monday.

10 THE COURT: Well, here's what we're going
11 to do. If that's a problem, just let us know.

12 AGENT BORREGO: Okay.

13 THE COURT: Okay? So what we're going to
14 do -- and I appreciate what Mr. Rocha's saying, and
15 also I think it's probably better for the marshals.
16 It's probably better for Mr. Ramos-Zepeda, and I
17 know it's certainly better for the interpreters.

18 So what we're going to do, just for the
19 record, right now we have admitted Government's
20 Exhibits 1, 2, and 3. Those are the only exhibits
21 that have been admitted.

22 We will reconvene beginning with
23 Mr. Rocha's cross-examination of Agent Borrego on
24 Monday, March 7th, at nine o'clock a.m. And I
25 really apologize for breaking this up. I know it's

1 not the best way to do it.

2 Ms. Granoff, is there anything --

3 MS. GRANOFF: Yeah, just one more
4 housekeeping matter, Your Honor.

5 THE COURT: Sure.

6 MS. GRANOFF: Since there's going to be
7 such a lengthy break in between the testimony of
8 direct and cross-examination, can we just ask the
9 Court to order the transcript so that both -- all
10 the parties, actually --

11 THE COURT: Yeah.

12 MS. GRANOFF: -- will have an opportunity
13 to refresh their recollection of that testimony
14 that was laid so far in order to pick up where
15 we're leaving off, since it'll be almost two to
16 three weeks?

17 THE COURT: Beth?

18 We'll figure it out. We'll figure it out.

19 MS. GRANOFF: Thank you, Judge.

20 THE COURT: So if, in fact, we do order
21 one, we'll certainly -- that will be available.

22 So I think that's it. Thank you very much
23 for your time. I appreciate it.

24 MR. ROCHA: Thank you, Your Honor.

25 MS. FURTADO: Thank you, Your Honor.

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THE COURT: Have a good weekend.
(Proceedings concluded at 4:26 p.m.)

C E R T I F I C A T E

I, Erica R. McQuillen, do hereby certify that the preceding pages of typewritten matter are a true, correct, and complete transcription of the digital recording of proceedings in the above-entitled matter.

Dated this 22nd day of March, 2016.

s/Erica R. McQuillen
Erica R. McQuillen, RDR, CRR